137-496

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 110.

WILLIAM E. BASSETT, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED SEPTEMBER 23, 1887.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 11, 1890.

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1 UNITED STATES OF AMERICA, }
Territory of Utah, } *ss:*

At a stated term of the district court of the first judicial district in and for the Territory of Utah, begun and holden in the city of Ogden, within and for the district and Territory aforesaid, on the fifteenth day of November, A. D. 1886, and continued by adjournment to and including the nineteenth day of November, A. D. 1886.

THE UNITED STATES OF AMERICA }
against
WILLIAM E. BASSETT. }

The grand jurors of the United States of America within and for the district aforesaid, in the Territory aforesaid, being duly impanelled and sworn, on their oaths do find and present that William E. Bassett, late of said district, in the Territory aforesaid, heretofore, to wit, on the second day of May, in the year of our Lord one thousand eight hundred and seventy-two, at the town of Cardiff, in Wales and in the Kingdom of Great Britain, did marry and take to wife one Sarah Ann Williams, and did then and there have her as his legal wife.

That thereafter and on or about the 14th day of August,
2 A. D. 1884, and before the finding of this indictment, at the county of Cache and Territory aforesaid and within the jurisdiction of this court, he, the said William E. Bassett, did unlawfully and whilst his lawful wife, the said Sarah Ann Williams, was still alive marry and take to wife one Kate Smith, and so the grand jurors aforesaid on their oaths aforesaid do say, find, and present that said William E. Bassett, on or about the day last aforesaid, at the county and Territory aforesaid, in manner and form aforesaid, did commit the crime of polygamy, against the form of the statute of the said United States in such case made and provided and against the peace and dignity of the same.

U. H. DICKSON,
U. S. District Attorney,
By OGDEN HILES,
Ass't U. S. Att'y.

WM. FARRELL,
Foreman of Grand Jury.

(Endorsed:) Witnesses examined before the grand jury, Sarah Williams Bassett. No. 984. First district court, Territory of Utah. The United States of America against William E. Bassett. Indictment for polygamy. A true bill. Wm. Farrell, foreman of grand
jury. Presented in open court by the foreman of the grand
3 jury and filed by me this 23rd day of November, 1886. T. A. Perkins, clerk. U. H. Dickson, U. S. att'y, by Ogden Hiles, ass't U. S. att'y. December 23rd, 1886, defendant arraigned. December 27th, 1886, defendant plead not guilty.

In the District Court of the First Judicial District of the Territory of Utah.

THE UNITED STATES OF AMERICA *against* WILLIAM E. BASSETT. } Arraignment, Order for Copy of Indictment, and Order Setting Time to Plead.

In this cause the defendant*ant* was arraigned in open court before the bar thereof, and, upon the indictment being read to him and he being called upon to plead thereto, said defendant demands a copy of said indictment as material and necessary to his defense, and refuses to plead without such copy; whereupon the court orders that the clerk furnish such copy; and defendant is, on motion of C. C. Richards and H. H. Rolapp, who appear as counsel for said defendant, granted until Monday morning, December 27th, A. D. 1886, at 10 o'clock, to plead to said indictment.

In open court.

(Signed) H. P. HENDERSON, *Judge.*

Dec. 23rd, 1886.

4 In the District Court of the First Judicial District of the Territory of Utah, County of Weber.

THE UNITED STATES OF AMERICA *against* WILLIAM E. BASSETT, Indicted for Polygamy.

Now comes the said defendant and moves the court to set aside the indictment herein on the ground that it is not found and presented as prescribed in the act regulating the mode of procedure in criminal cases, in this, that it appears said indictment was found without legal evidence or without any evidence other than that of the lawful wife of the defendant.

BEN. SHEEKS AND C. C. RICHARDS,
Att'ys for Def't.

(Endorsed:) No. 984. 1st dist. court, Utah. The United States *vs.* Wm. E. Bassett. Motion to dismiss indictment. Filed Dec. 27th, 1886. T. A. Perkins, clerk.

In the District Court of the First Judicial District of the Territory of Utah, County of Weber.

UNITED STATES OF AMERICA *against* WILLIAM E. BASSETT, Indicted for Polygamy.

5 UTAH TERRITORY, *Cache County,* } *ss:*

Sarah Ann Williams Bassett, being first duly sworn, deposes and says—

That on or about the nineteenth day of November, 1886, she ap-

peared and testified before the grand jury of said court for the November term thereof, 1886, respecting the offence of polygamy charged to have been committed by the said William E. Bassett and set out in the indictment on file herein, and that she is the identical person named in the said indictment as the lawful wife of the said defendant.

Deponent further sayeth not.

SARAH A. W. BASSETT.

Subscribed and sworn to before me this 25th day of December, 1886.

JAS. T. HAMMOND,
Notary Public, Cache County, Utah.

[NOTARIAL SEAL.]

(Endorsed:) No. 984. 1st dist. court, Utah. United States, etc., *vs.* Wm. E. Bassett. Affidavit. Filed Dec. 27th, 1886. T. A. Perkins, clerk.

6 In the District Court of the First Judicial District, Territory of Utah, County of Weber.

THE UNITED STATES OF AMERICA *against* WILLIAM E. BASSETT. } No. 984. Polygamy.

Order Overruling Motion to Set Aside and Dismiss Indictment. Plea.

Comes now the defendant before pleading herein and, by his counsel, C. C. Richards and Ben. Sheeks, Esq., moves the court to set aside the indictment herein and files his motion in writing, with an affidavit in support thereof; and said motion, after argument by said counsel for defendant for and the U. S. dist. attorney against the same, was submitted to the court for its decision, and the court now here orders that said motion be, and the same is hereby, overruled; to which ruling and order of the court defendant, by his counsel, now here duly excepts.

And defendant, being called upon to plead to the indictment herein, pursuant to time heretofore granted, plead not guilty thereto.

And, on motion of the U. S. dist. attorney, it is ordered that this cause be, and the same is hereby, set for trial upon Dec. 31st, A. D. 1886, at 10 o'clock a. m. of that day.

In open court.

(Signed) H. P. HENDERSON, *Judge.*

7 In the District Court of the First Judicial District, Territory of Utah, County of Weber.

THE UNITED STATES OF AMERICA *against* WILLIAM E. BASSETT. } No. 984. Polygamy. Trial Commenced.

In this cause the defendant, with his counsel, being in court and

ready for trial, then came the following jury, to wit, Temple Short, Andrew Larsen, C. A. Ekhurd, John Gerner, William Beeton, Edward Sewell, John Allen, A. I. Stone, Mark Fletcher, Charles Jay, George Burrows, Joseph Jenkins, good and lawful men, who, being legally chosen, called, empanelled, and sworn well and truly to try said cause, sat together and heard the testimony in part, and the further hearing hereof is continued until to-morrow morning, Jan. 5th, 1887, at 10 o'clock.

In open court, Jan. 4th, 1887.

(Signed) H. P. HENDERSON, *Judge.*

In the District Court of the First Judicial District of the Territory of Utah, County of Weber.

THE UNITED STATES OF AMERICA *against* WILLIAM E. BASSETT. } No. 984. Polygamy. Trial Continued.

8 The jury heretofore empanelled in this cause again came and sat together and heard the evidence in conclusion, and the further hearing hereof is continued until to-morrow morning, Jan. 6th, 1887, at 10 o'clock.

In open court, Jan. 5th, 1887.

(Signed) H. P. HENDERSON, *Judge.*

In the District Court of the First Judicial District, Territory of Utah, County of Weber.

THE UNITED STATES OF AMERICA *against* WILLIAM E. BASSETT. } No. 984. Polygamy. Trial Concluded. Order Overruling Motion for New Trial.

Judgment and Order Admitting to Bail Pending Appeal.

The jury heretofore empanelled in this cause again came and sat together and heard the arguments of counsel and the instructions of the court, and retired from the bar thereof, in charge of a sworn officer, to consider of their verdict, and subsequently they return into court and, being called, answered to their names, and on their oath say:

"We, the jury empanelled in the above-entitled cause, find the defendant, William E. Bassett, guilty as charged in the indictment.

ANDREW LARSEN, *Foreman.*"

And now comes the defendant and, by his counsel, moves the court for a new trial herein upon all statutory grounds, and the court now here, being fully advised in the premises, orders
9 that said motion be, and the same is hereby, overruled and denied; to which ruling and order of the court defendant, by his counsel, now here duly excepts.

And comes now the defendant and in open court waives time for sentence and asks that judgment be now pronounced.

The defendant, with his counsel, came into court. Said defendant was duly informed of the nature of the indictment found against him herein by the grand jury of this court on the 20th day of November, A. D. 1886, charging him with the crime of polygamy, of his arraignment, and of his plea of not guilty as charged in said indictment entered herein on the 27th day of December, A. D., 1886; of his trial, and of the verdict "guilty as charged in the indictment" rendered by the jury on the 6th day of January, A. D. 1887.

Defendant was then asked if he had any legal cause to show why judgment should not now be pronounced against him, to which he replied that he had none; and no sufficient cause appearing or being shown to the court, thereupon the court renders its judgment.

That whereas said defendant, William E. Bassett, having been duly convicted in this court of the crime of polygamy, it is therefore ordered, adjudged, and decreed that the said William E.
10 Bassett be imprisoned in the penitentiary of the Territory of Utah, at the county of Salt Lake, for the term of five years, and that he do forfeit and pay to the United States of America a fine of five hundred dollars, and that he do stand committed into the custody of the U. S. marshal for Utah Territory until such fine be fully paid.

You, said defendant, William E. Bassett, are remanded into the custody of the United States marshal for the Territory of Utah, to be by him delivered into the custody of the warden or other proper officer of said penitentiary.

You, said warden or other proper officer of said penitentiary, are hereby commanded to receive of and from said United States marshal him, the said William E. Bassett, convicted and sentenced as aforesaid, and him, the said William E. Bassett, to safely keep and imprison in said penitentiary for the term as in this judgment ordered and specified.

And now, on motion of defendant, by his counsel, and the U. S. district attorney consenting, and it appearing to the court that defendant is about to appeal to the supreme court of Utah Territory from the orders and judgment made and entered herein, it is ordered that defendant be, and he is hereby, admitted to bail pending such appeal; and the bond now on file herein is approved and adjudged a sufficient bond on such appeal.

11 In open court, Jan. 6th, 1887.

(Signed) H. P. HENDERSON, *Judge.*

In regard to bill of exceptions, transcript of which should here appear, see certificate at end of this transcript on appeal.

T. A. PERKINS, *Clerk.*

In the District Court of the First Judicial District of the Territory of Utah, County of Weber.

THE UNITED STATES, &c., *vs.* WM. E. BASSETT. } No. 984. Def't's Requests to Charge.

You should not convict defendant unless there is other evidence of his alleged marriage with Kate Smith, at Logan, in August, 1884, than his admission testified to by the first witness (Sarah Ann Williams Bassett), which tends to show that he married Kate Smith before his divorce from his former wife, Sarah Ann Williams Bassett.

(Endorsed:) Refused. H. P. Henderson, judge.

2. If, in your judgment, the facts testified to for the prosecution aside from defendant's admissions and confessions, add no
12 weight whatever to such confessions and do not in any way tend to establish the marriage with Kate Smith before defendant's divorce, you should find defendant not guilty.

(Endorsed:) Refused. H. P. Henderson, judge.

3. The court instructs the jury that the bonds of matrimony existing between the defendant and Sarah Williams Bassett were dissolved by the decree of divorce introduced in evidence on the 15th day of January, 1886, and the marriage and cohabitation between defendant and Kate Smith after that date would be lawful.

(Endorsed:) Refused except as given in gen'l charge. H. P. Henderson, judge.

(Endorsed:) No. 984. The United States *vs.* Wm. E. Bassett. Def't's requests to charge. Filed Jan. 6th, 1887. T. A. Perkins, clerk.

In the District Court of the First Judicial District of the Territory of Utah, Weber County.

UNITED STATES OF AMERICA *vs.* WILLIAM E. BASSETT. } Notice of Appeal.

Please take notice that the defendant above named hereby
13 appeals to the supreme court of Utah Territory from the judgment and sentence of said district court made and entered therein in said action against said defendant on the 6th day of January, A. D. 1887, and from the whole of said judgment.

SHEEKS AND RAWLINS,
Att'ys for Defendant.

To U. H. Dickson, U. S. district attorney for Utah Territory.

(Endorsed:) In first district court of Utah. No. 984. United States *vs.* William E. Bassett. Notice of appeal. Received copy of

within this 19th day of January, A. D. 1887. U. H. Dickson, district attorney. Filed January 19th, 1887. T. A. Perkins, clerk.

In the District Court of the First Judicial District, Territory of Utah, Weber County.

UNITED STATES OF AMERICA
vs.
WILLIAM E. BASSETT, Defendant.

The defendant above named having appealed to the supreme court of Utah Territory from the judgment and sentence of
14 the district court in and for the first judicial district in said Territory rendered on the 6th day of January, A. D. 1887, in said prosecution against said defendant, I therefore, as judge of said court and being advised as to the questions which will arise upon said appeal, do hereby certify that in my opinion there is probable cause for said appeal.

H. P. HENDERSON, *Judge.*

(Endorsed:) No. 984. 1st dist. court, Utah. United States *vs.* Wm. E. Bassett. Certificate of probable cause for appeal. Filed January 19th, 1887. T. A. Perkins, clerk.

TERRITORY OF UTAH, } *ss:*
County of Weber, }

I, T. A. Perkins, clerk of the district court of the first judicial district of the Territory of Utah, do hereby certify that the above and foregoing are full, true, and correct copies of the following-named papers and record entries on file and of record in my office in the case of The United States of America against William E. Bassett, No. 984 of the files of said court, as the same now appears on file and of record in my office, to wit:
15 Indictment, record of arraignment, &c., motion to dismiss indictment, affidavit on said motion, order overruling motion to dismiss indictment and record of plea, record of trial as entered on Jan. 4th, 5th, and 6th, A. D. 1887, order overruling motion for new trial, judgment, order admitting to bail pending appeal, defendant's request to charge, motion of appeal and certificate of probable cause for appeal, together with the date thereof and endorsements thereon.

And I further certify that a copy of defendant's bill of exceptions in said cause is not made part hereof because said bill of exceptions is in the possession of defendant's counsel, at the city of Salt Lake, and because I am informed by said counsel that it has been stipulated by and between themselves and the United States district attorney for Utah Territory that the original thereof in place of such copy should be used in the supreme court upon this appeal.

In witness whereof I have hereunto set my hand and
[SEAL.] the seal of said court this the 20th day of January, A. D. 1887.

T. A. PERKINS, *Clerk.*

16 [Endorsed:] The United States of America against William E. Bassett. Transcript on appeal. Filed 2d Feb'y, 1887. E. T. Sprague, clerk.

17 In the District Court for the First Judicial District, Territory of Utah, Weber County.

THE UNITED STATES OF AMERICA
vs.
WILLIAM E. BASSETT. } Polygamy.

Be it remembered that on the trial of this cause in the district court of the first judicial district of Utah Territory, at the November term thereof, the following, among other, proceedings were had and the exceptions hereinafter specified were duly taken by the defendant, to wit:

18 Q. The challenge to Juror Andrew Larsen.—ANDREW LARSEN, a petit juryman, being called into the jury-box by the clerk of the court, and being sworn to answer questions as to his qualifications to act as a juror in the trial of this case, the following proceedings were had:

Mr. RICHARDS: Mr. Larsen, did you ever belong to the Mormon Church?

Mr. LARSEN: Yes, sir.

Q. How long since you left the church?

A. It is a number of years ago.

Q. Did you ever live in the practice of polygamy?

A. I did before I left the church.

Q. What caused you at that time to discontinue that practice?

A. Because that good sound reason and common sense got the best of me.

Mr. SHEEKS: We challenge the juror for cause.

Mr. DICKSON: We deny the challenge. It doesn't appear that he is a polygamist now.

Mr. RICHARDS: Mr. Larsen, did you believe at one time that it was right for a man to have more than one living and undivorced wife?

A. I did.

Q. Up to what time?

A. Seventeen years ago.

Q. Have you ever been divorced from your plural wife?

19 A. No, sir; I haven't; only by the church.

Mr. DICKSON: You have a pardon from the President?

A. Yes, sir.

Q. Have you got it with you?

A. No, I ain't.

Q. Where is it?

A. It is home where I stay.

Q. How far is that from here?

A. It's only four blocks.

Mr. HILES: It is a pardon by President Arthur is it not?

A. Yes, sir.

Mr. RAWLINS: We challenge him, if your honor please, on the ground that he has been a polygamist.

Mr. DICKSON: How long would it take you to get the pardon?

A. Oh, about twenty minutes.

Mr. DICKSON: I wish to see that before we go on with the case.

Mr. RAWLINS: We will admit that he has been pardoned.

Mr. DICKSON: I want to see the conditions of the pardon.

Mr. RAWLINS: I understand, Mr. Larsen, that you at one time did live in the practice of polygamy with more than one woman?

A. Yes, sir.

Q. How long is it since you ceased to live in that relation?

20 A. Seventeen years ago.

Mr. DICKSON: I understand you to say, Mr. Larsen, that you now believe it is wrong for a man to live in the practice of polygamy?

A. I do.

The court takes a recess for 10 minutes, and at the expiration of that time Mr. Larsen places his pardon in the hands of the district attorney.

Mr. DICKSON: This pardon removes all his disabilities. It seems to be unconditional. It reads as follows:

"Chester A. Arthur, President of the United States of America, to all to whom these presents shall come, Greeting:

"Whereas Andrew Larsen, of the Territory of Utah, having been guilty of bigamy or polygamy and unlawful cohabitation before the passage of the act approved March 22, 1882, entitled 'An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes,' has become subject to certain penalties and political disabilities;

"And whereas having been assured that he has abandoned these unlawful practices and no longer countenances or gives any support thereto, and that he has not been guilty thereof since the passage of the act aforesaid, and is now a law-abiding citizen;

"And whereas the commission appointed under authority

21 of the said act, and the Governor and justices of the supreme court of the Territory having recommended him as worthy of the amnesty contemplated in section 6 of the above-entitled act, for which he in good faith has applied and made oath as required in such cases:

"Now, therefore, be it known that I, Chester A. Arthur, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, do hereby grant to the said Andrew Larsen a full and unconditional pardon.

"In testimony whereof I have hereunto signed my name and caused the seal of the United States to be affixed.

"Done at the city of Washington this 27th day of March, A. D. 1884, and of the Independence of the United States the 108th.

"[SEAL.] CHESTER A. ARTHUR.

"By the President:

"FRED'K T. FRELINGHUYSEN,

"*Secretary of State.*"

Mr. DICKSON: I submit that that removes any disabilities under which he was laboring.

The COURT: Mr. Rawlins, do you insist upon the challenge?

Mr. RAWLINS: Yes, sir.

The COURT: In the fore part of that pardon it recites the fact that he is under certain political disabilities.

22 Mr. RAWLINS: Yes, sir.

The COURT: Not having the right to sit on a jury—is that a political disability?

Mr. DICKSON: It is an abridgment of one of the rights of citizenship.

The COURT: I am inclined to take that view of it. I don't feel as certain about it as I wish I did, but I am inclined to take that view of it, that the pardon makes him eligible to sit on the jury. If the district attorney denies the challenge I will rule that way.

Counsel for defendant except to the ruling of the court. The defended exercised three peremptory challenges in the empanelling of the jury.

Mrs. SARAH ANN BASSETT sworn for the prosecution:

Q. What is your full name?
A. Sarah Ann Williams Bassett.
Q. Your maiden name was Williams?
A. Yes, sir.
Q. Were you ever married to the defendant here?
A. Yes, sir.
Q. When and where?
A. I was married to him on the 2nd of May.
Q. In what year?
A. 1872.
Q. Whereabouts?
A. In Cardiff, Wales.
Q. In the Kingdom of Great Britain?
23 A. Yes, sir.
Q. When did you come to this country?
A. I arrived in this country on the 19th day of July, 1872.
Q. Where did you go to live after you reached this Territory—you and your husband?
A. The first place was at Mr. Merrill's, in the 17th ward, Salt Lake City.
Q. How long did you live there?
A. That I don't remember. We didn't live there very long.
Q. Did you afterwards move to Logan?

A. We move from that place to another in Salt Lake City.
Q. But finally you moved to Logan?
A. Yes, sir.
Q. When was that, about?
A. I believe it is nine years the 19th of this month.
Q. And did you afterwards leave there, you and your husband, and return to Salt Lake City?
A. Yes, sir.
Q. When was that?
A. We left Logan on the 26th day of May, 1884.
Q. And went to Salt Lake City?
A. Yes, sir.
Q. Do you know Kate Smith?
A. Yes, sir.
Q. Did you ever have a conversation with the defendant in which he made any statement to you respecting his marriage to Kate Smith?

24 Mr. RAWLINS: I will ask you, if you ever did have any such conversation, whether there was any other person present at the time of the conversation?

A. No; there was not.
Q. I will ask you, further, if at the time of the conversation you were his lawful wife?
A. Yes, sir.

Mr. RAWLINS: We object, if your honor please, to this question and any testimony in relation to any conversation between this witness and the defendant for the reason that she is incompetent to testify against the defendant in respect to any matter which transpired between them during their marriage, and that she is incompetent to testify to any communication from the defendant to her during the marriage.

The COURT: There is one question, Mr. Rawlins, I would like to ask the witness. It is preliminary, merely, and it is a matter I would like to know before entering into the consideration of this question. I should like to ask her whether she desires in this case to be sworn or not—whether she has any objection to being sworn?

Mr. RAWLINS: I will ask her the question.

Mr. RAWLINS to witness: Have you any objection to being sworn and testifying in this case?

WITNESS: No, sir.

Mr. RAWLINS: The defendant objects, and I make the objection on his behalf.

25 Jury admonished by the court and recess taken until 2 p. m.

2 O'CLOCK P. M.

Objection argued at length by Mr. Rawlins for the defendant and by Mr. Dickson for the Government.

At 5 p. m. jury admonished by the court and an adjournment had until 10 o'clock to-morrow morning.

WEDNESDAY, *January* 5, 1887—10 a. m.

Objection overruled; to which ruling counsel for defence takes exception.

Mr. DICKSON: Mr. Reporter, read the question.

Question read by reporter as follows: "Did you ever have a conversation with the defendant in which he made any statement to you respecting his marriage to Kate Smith?"

Mr. DICKSON to witness: What is your answer to that?

WITNESS: What he told me?

Mr. DICKSON: The question is, If you ever had a conversation with him at any time when he made statements to you about his marriage.

A. Yes, sir.

Q. When?

A. On the Friday night following.

Q. What month was it?

A. In August.

Q. Of what year?

A. 1884.

Q. It was on Friday night?

26 A. Yes, sir. Mr. Bassett left me on Sunday. This was on the following Friday night.

Q. That is, he left your home in Salt Lake City?

A. Yes, sir.

Q. Did he tell you where he was going to when he left?

A. No, sir.

Q. When did he return?

A. I sent up for him on Friday and asked him to come down. He came, and we talked the marriage over on Friday night. After he had left I wanted to see him.

Q. That is, after you had the conversation?

A. Yes, sir; after he told me he was married.

Q. I want to get at the time of the first conversation you had—when he told you of the marriage.

A. That was Sunday, the 17th of August.

Q. Where?

A. At my house, in Salt Lake City.

Q. Go on and just state all that he said and all that you observed in his conduct that Sunday morning.

Mr. RAWLINS: We object to this testimony as being incompetent. Objection overruled. Exception by defense.

Mr. DICKSON to witness: Take your time, now, Mrs. Bassett, and tell the story in detail.

WITNESS: That Sunday?

Mr. DICKSON: Yes.

27 WITNESS: Mr. Bassett came home on Saturday, the 16th of August. He acted kind of strange.

Objected to.

Mr. DICKSON: Just state what you observed in his manner.

Mr. RAWLINS: I move to strike that out.

The COURT: That may go out, that "He acted strange."

Mr. DICKSON: Just state what you observed in his manner and conduct.

Mr. RAWLINS: We object to that question as being immaterial.

The COURT: I think it is competent for her to testify to what his actions were, but not to draw conclusions from it—not to undertake to say that he acted strange, but to state what his actions were. The statement that he acted strange may be stricken out.

Mr. DICKSON: State what you observed in his conduct.

A. He acted strange towards me. I thought there was something the matter.

Q. In what way did he act strange towards you?

A. Mr. Bassett asked me on Saturday night if I would go down town for a walk. We went down as far as Main street, and Mr. Bassett never spoke to me on the way. He brought me back as far as the tithing office and asked me to wait for him till he got something out of the office that he wanted to bring home. Instead of waiting I went on home. After that I left Mr. Bassett sitting in the
28 sitting-room and went to bed. While down town he took me to Mr. Griffith's to supper, on First South street—Mr. Bassett, the children, and myself.

Q. During the walk, didn't he talk to you at all?

A. No, sir.

Q. Next Sunday morning, just state what took place.

A. Next Sunday morning, about dinner time, he asked me if I wanted to go to meeting. I said, No. He asked me if I would like to go for a walk. I said, No; I didn't care. He had bought me a new dress, and he asked me to put it on. To please him I wore the dress, and as I was dressing in my bed-room, in front of the glass, Mr. Bassett sat opposite with the baby, and I thought I could see him crying.

Q. That is, you could watch him from where you stood by looking in the glass and without turning around yourself?

A. Yes, sir. I turned round and said, "Will, how do you like that?" Then he came up and put his arm around me and kissed me and said, "Sarah, you put me in mind now of the day we were married." Then he said, "Let's go for a walk." We went down to the depot and back. He took my baby, and he made the remark then that it was the last time he would take my baby. After that, when I was sitting down in the dining-room, he sat on one
29 side of the room and I sat on the other. He told me he had something he wanted to tell me. I says, "What is it?" He says, "While I was in Logan I got married." I says, "Is that so?" He says, "Yes." I says, "Then you had better leave me." "Do you mean it?" he says. I says, "Yes."

Q. Did he tell you who it was he had married?
A. He told me on Friday night who it was.
Q. Who did he say it was?
A. Kate Smith.
Q. Did he tell you that he had married Kate Smith when he was in Logan that week?
A. Yes, sir.
Q. When did he leave your house to go to Logan?
A. On the 12th of August.
Q. Did he tell you what day it was he was married in Logan?
A. No, sir.
Q. And you and he separated at that time?
A. Yes, sir.
Q. Have you lived in Salt Lake City since then?
A. I lived from the 17th of August until the 21st of October in Salt Lake City; after that time I went to Logan.
Q. That is, you lived in Salt Lake City from the day he told you of this marriage to the 21st of October?
A. Yes, sir.
Q. Then you went to Logan?
A. Yes, sir.
30 Q. Have you lived there ever since?
A. Yes, sir.
Q. Did you ever receive notice, at any time subsequent to that, of divorce proceedings instituted against you by your husband?
A. Yes, sir; I received a summons of divorce.
Q. How long after this conversation that you had with him in August of 1884?
A. It was—I had it on the 27th of November, 1885.
Q. After you received the summons you speak of in divorce did you meet Mr. Bassett?
Mr. RAWLINS: We object to that. What is the purpose of it?
Mr. DICKSON: To show a subsequent conversation about the same matter.
Mr. RAWLINS: About the marriage?
Mr. DICKSON. Yes, sir.
Mr. RAWLINS: We make the same objection to this as we did to the other conversation.
Objection overruled. Exception.
(Question read to witness by the reporter.)
A. Yes, sir.
Q. Where?
A. In Salt Lake City.
Q. You had gone down from Logan?
A. Yes, sir; to answer the summons. He met me near Jenning's place as I was going from the depot. He took me to the Valley House. We had a conversation in the Valley House.
Mr. SHEEKS: About what?
31 Mr. DICKSON: About this divorce and what she was going to do—whether she would defend it or not—in which she told

him that she would defend it and tell all she knew about his marriage if he pressed the divorce suit.

Mr. RAWLINS: We object to that as being immaterial and incompetent.

The COURT: That would seem to be of the same character as the other. Of course, as affecting the divorce at this time——

Mr. DICKSON: We don't offer it for any such purpose.

Mr. RAWLINS: Is it simply a statement by her to him?

Mr. DICKSON: I will state again what we expect to prove. It is, in substance, that he asked her if she were going to defend the divorce suit, and she told him she was; that she was not willing to be divorced and would tell it all. To prevent her from doing that he agreed to withdraw the suit, thus showing consciousness of his guilt for fear that the whole truth might be told. It is not for the purpose of affecting the divorce suit at all. In the light of the prior conversations it is to show that she was accusing him of the crime and he was admitting his guilt, not only by not denying it, but by telling her that he would withdraw that suit if she would not appear against him.

32 The COURT: I think it may be admitted.

Exception by defense.

Mr. DICKSON to witness: Just state all the conversation you had there at that time about the matter.

WITNESS: He took me to the Valley House and registered me there and showed me to my room. While there we talked over the divorce.

Q. Just state what was said.

A. I told Mr. Bassett he should not divorce me. I told him I had letters in my possession that would give him right straight away if he attempted it. He said that rather than that I should appear against him and give him away—as I would give him five years—he would withdraw the suit. That was Mr. Bassett's conversation to me.

Q. Then you returned home?

A. No, sir.

Q. When was this conversation?

A. This was Thursday, the 31st day of December of last year—1885.

Q. Did he stay with you at the Valley House?

A. He took all his meals with me while I was in Salt Lake City; he ate at the Valley House with me.

Q. How long was it before you returned to Logan?

A. On the 2nd of January, 1886. Mr. Bassett brought me back to the depot that morning, with the understanding——

Objected to.

33 Q. Just state what he said. Did he say anything further about withdrawing the suit except what he said in the Valley House?

A. He asked me if I would help him out of the scrape he had

got into. I told him I could not do anything for him. I told him if he wanted to he could live with Kate Smith if he would provide for me and the children. I told him I was perfectly willing for him to live with her if he would support me and the children; but I didn't want to be divorced, but to live on his name for my protection and the children.

Q. Did he tell you that he would withdraw the suit?

A. Yes, sir; while he was there at the Valley House he told me he would withdraw the suit if I would not appear against him; that he would give me $40 a month and let me live on his name and I would never want for anything while he lasted, and I believed it.

Q. When did you first learn that you had been divorced?

Objected to as immaterial.

The COURT: What is the object of it?

Mr. DICKSON: I think we are entitled to show when the news first came to her of the divorce having been obtained under the circumstances.

The COURT: I hardly see how that would be proper.

34 Mr. DICKSON to witness: Where is Logan, the place where he told you he had married Kate Smith?

A. It is in Cache Valley.

Q. Utah Territory?

A. Yes, sir.

Q. You spoke of a conversation you had with your husband on the Friday after the Sunday on which he told you he was married, and in which last conversation he told you it was Kate Smith whom he was married to?

A. Yes, sir.

Q. Where was that?

A. In the parlor of my house, in Salt Lake City.

Q. You sent for him to come down?

A. Yes, sir.

Q. Just state what the conversation was there.

A. What we talked about?

Q. Yes.

A. I asked him what he meant by doing that without consulting me in any way. He said that he thought he had done right anyhow, and as I and the children would never want for anything I could please myself about living with him.

Q. He said that?

A. Yes, sir.

Q. He had never spoken to you about the marriage before he told you that he was married?

35 A. Not before the 17th of August.

Q. Then he told you he was married?

A. Yes, sir.

Q. He never asked your consent?

A. No, sir.

Q. Never mentioned it to you in any way?

A. No, sir.
Q. I think you stated yesterday that you knew Kate Smith?
A. By sight. She lived in Logan at the same time we did.
Q. Did Kate Smith ever call at your house?
A. She called once, on Mr. Bassett, I suppose. It couldn't have been on me.
Q. When was that?
A. It was in May, 1884, before we moved to Salt Lake City.
Q. You knew her by sight, at least?
A. Yes, sir.

Cross-examination:

Q. You are a member of the Mormon Church, are you?
A. I claim to be.
Q. How long have you been a member of the church?
A. I was born in the church.
Q. Were you born in this country?
A. No, sir; in Wales.
Q. You were married to Mr. Bassett in Wales?
A. Yes, sir.
Q. What time did you move to this country?
36 A. I came here in 1872.
Q. You knew that polygamy was an article of faith in the Mormon Church, did you not, at the time you came here?
A. No, sir; I did not.
Q. How soon after you came here did you learn that?
A. The first summer.
Q. The summer of 1872?
A. Yes, sir.
Q. You and your husband talked about it at times?
A. No, sir; he was more opposed to it than me.
Q. You never talked about it at all?
A. No, sir.
Q. Then how do you know he was opposed to it?
A. By talking about it.
Q. You did talk about it, then?
A. We talked about it by seeing others in it. He has a sister in it.
Q. You have talked about it, then?
A. Yes, sir.
Q. Why did you say you hadn't talked about it?
A. We talked about it, but not in a very pleasant light.
Q. He knew you were very much opposed to it?
A. Yes, sir.
Q. He had always known that?
A. Yes, sir.
37 Q. You had given him to understand, hadn't you, that if he went in polygamy you wouldn't live with him?
A. Yes, sir; I wouldn't live with any man in polygamy.
Q. He knew that?
A. Yes, sir.

Q. He knew that you wouldn't live with him?

Mr. DICKSON: What is the purpose of this examination?

Mr. SHEEKS: How frequently do you think you and he talked of this subject together?

Objected to as utterly irrelevant and immaterial.

The COURT: What is the object of it?

Mr. SHEEKS: I prefer not to state it to the court at present.

The COURT: You think it is material?

Mr. SHEEKS: Yes, sir.

The COURT: You can go on.

Q. You had frequent talks about it between yourselves?

A. I decline to answer your question.

Q. You won't answer the question?

The COURT: Mrs. Bassett, it is proper for you to answer the question. It is entirely proper for him to make these inquiries, and you ought to answer them, and the best you can. It is not done for the purpose of annoying you; it is done for some other purpose in the case. Give the best recollection you can of the matter. That
28 is all that is asked of you.

Mr. SHEEKS: Mr. Reporter, read the question.

(Question read by reporter.)

WITNESS: Not very.

Q. But it was thoroughly understood between you that you would not in any case submit to anything of the kind?

A. Yes, sir.

Q. And you used the expression that you would make it warm for him if he undertook it?

A. No, sir.

Q. But that you wouldn't agree to it at all—that was understood, was it?

A. Yes, sir.

Q. And you had told him so?

A. No, sir; I hadn't.

Q. Never had told him so?

A. No, sir.

Q. It was understood with you, but not with him—is that the way I understand you?

(No answer.)

Q. Do you say you had never told him that you wouldn't submit to it?

A. I might have said so in conversation.

Q. Did you or did you not?

A. I don't know.

Q. Did you ever talk with him about it?

A. Yes, sir.

Q. How frequently?

29 A. A good many times.

Q. How frequently, do you think?

A. I couldn't tell you, I am sure.

Q. Was there any understanding between him and you?

A. None at all.

Q. He never suggested marrying another woman before he told you he had married?

A. No, sir.

Q. Never at all?

A. No, sir.

Q. You never suspected that he would, did you?

A. No, sir; I never did.

Q. Had you any apprehension of that kind at all?

A. No, sir.

Q. So that at the time you say Kate Smith visited him in May you had no apprehension that there was anything of that kind between them?

A. No, sir.

Q. You had seen nothing to indicate anything of that between them?

A. No, sir.

Q. You don't know of her having visited him at any other time, do you?

A. No, sir.

Q. Do you know of his having visited her?

A. No, sir; I don't.

Q. What did you say was the date of the first conversation
40 you had with him about his being married to her?

A. The 17th of August.

Q. What day of the week?

A. Sunday.

Q. What was said in that conversation? Just repeat it as it occurred.

A. He told me that while he was at Logan he got married.

Q. That was all he said at that time, was it?

(No answer.)

Q. That was on Sunday. When was the next conversation?

A. On the following Friday night.

Q. Repeat what was said at that time.

A. I sent for Mr. Bassett at that time. When he got there——

Q. What did he say?

A. He told me he thought he had done right by marrying Kate Smith.

Q. Was that all he said at that time?

A. He told me he would do right by me and the children; I could please myself about living with him.

Q. Was that all he said at that time about the marriage to Kate Smith? If he said anything more that you can remember, state it.

A. I don't remember.

Q. You don't think he said anything more?

A. Yes; I believe he did, but I don't remember it.

41 Q. Can't you remember any more of it?

A. No, sir.

Q. How long was your conversation at this time in relation to this marriage?

A. Mr. Bassett stayed there quite a while that evening.
Q. About how long?
A. About two hours, I should judge.
Q. Did he talk about other things in addition to this marriage?
A. Yes, sir.
Q. This you have repeated now is all that you can remember that he said?
A. All I can remember now.
Q. When was the next conversation in relation to it?
A. At the Valley House.
Q. What time do you fix that?
A. On the 30th day of December, 1885.
Q. From the 17th of August, 1884, until December, 1885, had you been with Mr. Bassett at all?
A. I don't understand.
Q. Well, from the time of the last conversation you have mentioned until that conversation at the Valley House had you been with Mr. Bassett at all?
A. No, sir.
Q. You hadn't lived with him?
A. No, sir; Mr. Bassett used to come there.
42 Q. But you haven't lived with him at all during that time?
A. No, sir.
Q. You refused to live with him, didn't you?
A. Yes, sir.
Q. And continued to refuse to live with him up to the time you received notice that he had applied for a divorce?
A. Yes, sir.

Redirect examination:

Q. You say you didn't know at the time of your marriage in Wales that polygamy was a tenet of the Mormon faith?
A. I had heard it spoken of, but then I was too young to know anything about it.
Q. You say your husband didn't believe in it at that time?
A. No, sir; he doesn't believe in it to-day.

Mr. RAWLINS: That is what we claim.

Q. When Miss Smith came to your house to see your husband in May, 1884, was your husband a bishop in the church or did he hold any office in the church at that time?

Objected to as immaterial.

Mr. DICKSON: It will explain if she came to see him as an officer in the church at that time.

The COURT: The testimony now is that she went to see him. If it is sought to be explained in that way, that she was going
43 on church business, then it would be proper to show that he didn't hold any office in the church.

Q. This conversation you had with your husband on this Friday

that you sent for him, that you detailed, were you crying and distressed while your husband was there?

A. Yes, sir.

Recross-examination:

Q. Were you angry?

A. No, sir; I was not.

Q. Didn't show any temper at all?

A. No, sir.

Q. Never did at any time?

A. I don't say but what I have, but not since this marriage.

Mr. DICKSON: Had you any children by your marriage?

A. I have two living. I buried four.

Prosecution rests.

Mr. RAWLINS: If your honor please, I think it proper now to move to strike out this evidence as being incompetent and insufficient to make a case against the defendant which can be submitted to the jury. The evidence, if your honor please, as it stands now, is that while the defendant was living with his wife she claims that he made certain admissions to her to the effect that at some time in 1884 he had married Kate Smith. There is no evidence of
44 any sort showing any kind of association or cohabitation with Kate Smith—none of those incidents which would ordinarily be expected to follow a marriage—and the question which is presented now is, Can the defendant be convicted of the crime upon statements or admissions such as these without any accompanying circumstances tending to corroborate them? I submit that the defendant in any criminal case cannot be convicted upon such evidence alone; and in support of this proposition I will briefly as I can, because I have no desire to take up the time of the court, call attention to a few authorities.

Argued at length by counsel on both sides.

The COURT: The evidence in this case tending to show the first marriage does not depend upon admissions at all. The testimony as to that, if it is to be believed, which is a matter entirely for the jury, proves it directly. Cohabitation following it is proven directly. Cohabitation up to the time when this second marriage is alleged to have come to the knowledge of the defendant's wife is proven directly. Evidence that he was away from home at the time and that the party to whom he claimed to have been married lived at Logan is in the case; and another thing is his bearing
45 after the alleged marriage. I think it is proper under the circumstances to submit the question to the jury. Of course, it is purely a question of fact for them. I think as the authorities, some of them read here, say that a person cannot be convicted of crime upon a bare admission, without anything else to support it; but where there are circumstances tending to show the other circumstances in the case I think it is a question for the jury. In this

case the evidence is direct that the man believed it right to take a second wife; that he stated so at the time as his reason for doing so.

Mr. SHEEKS: She says he didn't believe it right.

The COURT: I know that she says he didn't, but she says that he told her that he thought he had done right. The motion to strike out the evidence is denied.

Defence except to the ruling of the court.

Jury admonished by the court and recess taken until 2 p. m.

2 O'CLOCK P. M.

Mr. DICKSON: I ask permission to recall Mrs. Bassett.

Witness, SARAH ANN WILLIAMS BASSETT, recalled by the prosecution:

Q. When your husband returned on this Saturday that you speak of, you having had a conversation with him the next morn-
46 ing, on Sunday, after the Saturday evening that he returned, did he say anything to you about where he had been?

A. Yes, sir.

Q. Where did he say he had been?

A. He told me he had been to supper the night before at Mr. Lewis', in Logan.

Q. Are you acquainted with the Lewis family?

A. Yes, sir.

Q. Were they living at Logan at that time?

A. Yes, sir.

Q. Did he bring you any message from them?

A. He told me that Mrs. Lewis sent her regards to me and the children.

Mr. SHEEKS: Is that all the way you have of knowing that he was at Logan at that time?

A. Yes, sir.

Q. That is the only way in which you found out that he was in Logan at that time?

A. Yes, sir.

Q. That is the only way in which you know he had been in Logan at all during that time?

A. Yes, sir; by what he told me.

Q. By these conversations you related?

A. Yes, sir.

Q. Did you and Mr. Bassett ever separate before this time you mention?

A. Yes, sir.

Q. You have lived separate for awhile before?

47 A. Yes, sir.

Q. After you found out that Mr. Bassett had got a divorce, did you make known the fact to the prosecuting officers of this alleged marriage to Kate Smith?

A. No, sir.

Q. How did you come to be a witness?

A. I was subpœnaed.

Q. Didn't you directly or indirectly make known to the officers that he had told you the fact?

A. No, sir.

Q. Do you know how they got knowledge of the fact?

A. No, sir; I don't know. I have denied the divorce.

Q. But you didn't tell them that he had told you he was married to Kate Smith?

—. ——.

Q. How did you come to tell them that?

A. I didn't tell the officers of the law, but I told everybody else.

Q. You sent word to them?

A. No, sir.

Q. After he commenced proceedings for divorce you commenced telling everybody.

A. No, sir. Mr. Bassett and I had parted, and my friends were making inquiries. I had to tell them the reason of it.

Mr. DICKSON: Did you ever, directly or indirectly, send any word to any officer of the law before you were subpœnaed?

A. No, sir.

48 Q. Did you ever communicate anything about this case, directly or indirectly, to any officer of the law before you were subpœnaed?

A. No, sir; I did not.

Q. Did you ever open your lips about it to any officer of the law before you were subpœnaed?

A. No, sir.

Q. When did you and your husband separate before—how long before this trouble?

A. I believe it is thirteen years.

Q. That was not long after you were married?

A. I was married fifteen years ago this spring.

Q. Two years after you were married?

A. Yes, sir; Mr. Bassett left me then.

Q. How long did you live apart at that time?

A. Three months, I believe.

Q. Did you live together again after that?

A. Mr. Bassett came home.

Q. And you and he lived together again from that time till this trouble?

A. Yes, sir.

Mr. RAWLINS: In view of the additional evidence introduced, I renew my motion to strike out all this evidence in relation to the alleged confessions of the defendant on the ground that they are insufficient to be submitted to the jury.

Motion denied.

Exception by defense.

Mr. DICKSON: We rest.

49 Opening statement on the part of the defense made to the jury by Rawlins, after which counsel for defense offer in evidence the record of the divorce.

Mr. DICKSON: No objection.

Mr. RAWLINS: I will not stop to read it now; we will consider it read.

Mr. DICKSON: Just mention the date of the decree.

Mr. RAWLINS: The decree is dated January 15th, 1886.

(Petition in divorce marked "Defendant's Exhibit No. 1, J. W. P.")

(Summons and sheriff's return thereon and certified copy of minutes of probate court showing default of defendant and finding of court, marked "Defendant's Exhibit No. 2, J. W. P.")

(Certified copy of decree of divorce marked "Defendant's Exhibit No. 3, J. W. P.)

Mrs. KATE BASSETT sworn for the defense:

Q. Your name is Mrs. Kate Bassett?

A. Yes, sir.

Q. Were you ever married to the defendant, Mr. Bassett?

A. Yes, sir; I was married to him on the 25th day of January, 1886.

Q. In what place?

A. Salt Lake City.

Q. By whom and in whose presence?

A. Adam Spiers married me, with Neils Rasmussen and John Smith as witnesses.

50 Q. On the 25th day of January, 1886?

A. Yes, sir.

Q. Were you or not ever married to the defendant, or did you ever enter into a marriage with the defendant at any other time or place other than on that occasion?

A. No, sir; I never did.

Q. Prior to the time of your marriage where had you resided?

A. In Logan City. I was born in Logan City and lived there until I was married.

Q. In what business were you engaged in 1884?

A. Clerking in the Fourth Ward Co-op. Mr. C. B. Robbins was the manager and I was the clerk.

Q. How long were you engaged as clerk in that store?

A. I was there altogether about five years.

Q. When did you cease to work there?

A. I ceased working there at steady employment in February, 1885, but I was on and off there until I came down here in 1886.

Q. What time in 1886 did you go to Salt Lake City?

A. On the 24th of January, 1886.

Q. That was the day before your marriage to the defendant?

A. Yes, sir.

Q. Where were you during August, 1884?

A. I was working in the Fourth ward store.

Q. Let me call your attention to the period particularly from, say, the 10th of August until the 17th.

51 A. I was there continuously during the month of August. Mr. Robbins was very sick during that month; in fact, during the whole summer he was laid up, more or less, and part of the month of August he was confined to his room.

Q. What duties did you perform there at that time?

A. I was saleswoman.

Q. Did you have anything to do with keeping the accounts?

A. Only entries in the day book.

Q. First you made sales and then you entered them on the day book?

A. Yes, sir.

Q. What time did you go to the store in the morning?

A. My hours were from half past 7 to 8 in the mornings, and I generally stayed there until half past 8 at night. When goods came in or we were stock-taking I stayed later. Sometimes it would be 11 o'clock before I got home.

Q. Where did you take your dinners during this time?

A. Mr. Robbins' house was next door, and I used to run in there for my dinners. I would take my breakfast and supper at home.

Q. Where was your home, with reference to the store?

A. It was at my father's house.

Q. Your father was alive at that time?

A. Yes, sir. Mother died some six years ago, and I had charge of the family.

52 Q. Who else was at home besides you and your father in August, 1884?

A. My sisters.

Q. How many sisters were at home?

A. Five, I think, with myself.

Q. Will you name them?

A. There was Emma, Drew, Florence—Alice was living at my sister's—Hattie, and myself.

Q. I will ask you if that is the book in which you made the original entries.

(Book produced by counsel and handed to witness.)

A. Yes, sir; that is the book.

Q. You may turn to the pages there or the dates in August, 1884.

A. The 10th was on Sunday.

Q. Are there any entries on the 10th?

A. No, sir.

Q. The 11th was Monday?

A. Yes, sir.

Q. And the 12th was Tuesday?

A. Yes, sir.

Q. Examine it and please point out the entries made by — on those dates.

A. These are my entries.

(Witness indicates entries made by her to counsel, court, and jury.)

Q. You have checked all the entries made by you of sales?

A. Yes, sir.

53 Q. State whether or not these entries were made by you at the time of the transaction.

A. The most of them were. Mr. Robbins would have the books at home posting them on the first of the month, from about the 13th to the 17th, and the last of the month. He always took the books down to his house to post them. While he had them there I would enter sales on slips and he would take them from the slip.

Q. Where you took them from slips is the word "slip" marked on the account?

A. In some places it is.

Mr. DICKSON: It was not always noted when they were taken from slips and when they were not?

A. No, sir.

Mr. RAWLINS: State whether or not you met Mr. Bassett, the defendant, at Logan, at any place, during August, 1884.

A. No, sir; I didn't know he was in town until after he had left.

Q. You didn't see him at all?

A. No, sir.

Q. Did you meet him at any other time at Logan—that is, to be in his company?

A. No, sir; not to be in his company. I have seen him to pass the time of day with him.

Q. That is, while he lived there?

A. Yes, sir.

Q. You had a speaking acquaintance with him?

54 A. That is all I did.

Q. Nothing more than that?

A. No, sir.

Q. Did you visit Salt Lake City just after Mr. Bassett moved down there in May, 1884?

A. I visited there in October, 1884.

Q. What was the occasion of your visiting Salt Lake City at that time, and who were with you?

A. I came down with the members of the Logan choir; I was a member of that.

Q. During what dates were you at Salt Lake City?

A. I think we came down on the 3rd—I am not positive—and I stayed until the 10th.

Q. You came down to the October conference?

A. Yes, sir.

Q. Who were with you at that time?

A. My sisters; three of them.

Q. Name them, please.

A. Lucy Cardon, Emma Smith Baliff, and Florence Smith.

Q. Where did you stop during the time you were in Salt Lake City at that time?

A. I stopped at the Valley House for three nights, M. R. Evans' two nights, and put up at the Continental Hotel one night.

Q. Who, if any one, slept with you during the time you slept at the Valley House?

A. My sister. The room we occupied was No. 14. Six
55 ladies slept in the same room—two of my sisters, Florence Smith, Emma Smith Baliff, and two other ladies.

Q. Are any of those ladies here?

A. Yes, sir; Emma Smith and Jane Villet.

Q. Did Mr. Bassett visit you at any time while you were at the Valley House?

A. No, sir; I didn't see him only on the morning we got into Salt Lake City. When we went to the tithing office I saw him there, and, with the other members of the choir, I shook hands with him and passed the time of day with him.

Q. Was that the only occasion upon which you met him in Salt Lake City?

A. Yes, sir; that is the only time I saw him.

Q. How did you come to go to the Continental Hotel? You say you stayed there one night.

A. I stayed at Evans' Monday night and Teusday night. Teusday evening my sister and her husband came up and wanted me to go to the theatre. They came up for me and took me and Sister Florence to the theatre. After the theatre we went to the Continental. He got my room and registered me.

Q. Who slept with you that night?

A. My sister, Florence Smith, and Mr. and Mrs. Cardon occupied a few rooms further from me.

Q. The other two nights you stayed at Evans'?

A. Yes, sir.

Q. How did you come to go there?

56 A. I was intimately acquainted with his wife. She was raised almost with us, and we always made that our stopping place when we went to Salt Lake City. I caught a severe cold going down Sunday evening, and when I went up to see the folks I stayed all night. My sister Florence was with me.

Q. At either of those places did you see Mr. Bassett?

A. No, sir; I didn't.

Cross-examination:

Q. How long have you known Mr. Bassett?

A. I have just had a speaking acquaintance with him for about nine years.

Q. He was living in Logan when you first became acquainted with him?

A. Yes, sir.

Q. Some nine years since?

A. Yes, sir.

Q. But is was only a passing acquaintance?

A. Yes, sir.

Q. How long since you became intimately acquainted with him?

A. Well, about 18 months ago.

Q. About how long before your marriage?
A. About four months, I think.
Q. Up to that time there had been but a passing acquaintance between you?
A. That is all.
57 Q. How long is it since he first proposed matrimony to you?
A. It was about three or four months before we were married, in 1886.
Q. How long before you were married did he commence to pay you attentions?
A. We corresponded about four months before I was married.
Q. How long before you were married was it that he first commenced to pay you attentions?
A. About four months.
Q. You were living in Logan then?
A. Yes, sir.
Q. Can't you tell us, Mrs. Bassett, about what month it was your husband commenced to pay his addresses to you?
A. I think it was in October, 1885.
Q. Can't you tell us, Mrs. Bassett, when you became engaged to him—when he proposed matrimony to you first?
A. It was somewhere along in December, 1885.
Q. Did you accept his proposition?
A. I accepted it on condition that he would get a divorce.
Q. So the truth is that your husband commenced paying his addresses to you before he had applied for a divorce and became engaged in marriage to you before he had obtained a divorce. Is that true?
A. He began writing to me.
58 Q. He began paying his addresses to you before he applied for a divorce at all?
A. Well, through correspondence.
Q. They were love letters, were they not?
A. Friendly letters was all that he started on.
Q. I understand you to say that he commenced to pay his addresses to you as early as October.
A. Yes, sir; that was when we first began to correspond.
Q. He commenced paying his addresses to you then?
A. Yes, sir.
Q. You received his attentions?
A. I answered his letters.
Q. You received his attentions, did you?
A. Yes.
Q. So it is true, is it, that he commenced to pay you his addresses and you received his attentions before he had applied for a divorce from his wife?
A. Yes, sir; that was in October. I didn't know when he applied for a divorce.
Q. You didn't care, did you?
A. Yes, sir; I did care.

Q. But, so far as his paying attention to you and so far as you receiving his attentions were concerned, you didn't care whether he applied for a divorce or not or whether he intended to get one?

A. No; at that time I didn't.

59 Q. You accepted his proposal of marriage, as you have stated, conditionally before he had been divorced from his lawful wife?

A. Yes, sir; I knew that he was intending to get a divorce.

Q. When you commenced receiving his attentions you didn't know he intended to get a divorce?

A. I don't know that I understand you.

Q. You answered me a little while ago that he intended to get a divorce when he commenced paying his attentions to you.

A. No, sir; I didn't.

Q. Yet you received his attentions notwithstanding you didn't know that he intended to seek a divorce?

A. Yes, sir.

Q. Why would you accept the attentions of a married man if you didn't intend to marry him—why accept the addresses of a married man when you didn't know that he had any intention of getting a divorce from his lawful wife?

A. He just wrote to me; his letters were friendly letters. Of course I wouldn't marry him until he was divorced.

Q. Answer that question. You have stated repeatedly that he commenced paying his addresses to you—you know what that means—in October; you say now that you wouldn't have married him until he got a divorce.

60 A. No, sir; I wouldn't.

Q. That being the state of your mind, why did you permit him to pay his addresses to you? Why did you receive his addresses and respond to his attentions when you knew he had a lawful wife living and when you didn't know that he intended to get a divorce from her, and when your intention was not to marry him unless he was divorced? Why, under those circumstances, did you receive the addresses of a married man?

A. I didn't know that his attentions at that time was going to end in that.

Q. Don't you know what is meant by a gentleman paying his addresses to a lady?

A. I know that they sometimes pay addresses to ladies just for friendliness.

Q. You know what courting means?

A. I can't tell whether I do or not; I never courted very much.

Q. You know what is understood by that term?

A. Yes, sir.

Q. You know that it means the same as a gentleman paying his addresses to a lady?

A. Yes, sir.

—. You understood it in that way when I asked you when this man commenced to pay his addresses to you?

A. I understood you, friendly addresses.

61 Q. Didn't you understand it just as you now do, when you said that he commenced to pay his addresses to you in October?

A. Not when you first spoke.

Q. I asked you when you became intimately acquainted with Mr. Bassett and you said about 18 months ago, which would be about six months before your marriage to him. You said you got intimately acquainted with him about 18 months ago; then I asked you when he first commenced to pay his addresses to you and you said about three or four months before your marriage, didn't you answer, in October?

A. Yes, sir; I meant friendly letters.

Q. How long had you been on intimate and friendly terms with this gentleman before he commenced corresponding with you?

A. I never corresponded with him before.

Q. I say how long had you been on intimate terms with him before you commenced to correspond with him?

A. I can't tell exactly when.

Q. Had you been intimate with him at all before you commenced to correspond with him?

A. No, sir.

Q. Up to that time it was but a passing acquaintance?

A. That is all.

Q. Were you in the habit of corresponding and opening correspondence with married men with whom you had nothing

62 but a passing acquaintance and who were not related to you?

A. If they wrote to me I would generally answer the letters.

Q. You were not in the habit, were you, of carrying on friendly correspondence with married men with whom you had nothing but a passing acquaintance?

A. Yes, sir; I generally answer their letters.

Q. Gentlemen with whom you had but a passing acquaintance?

A. Yes, sir.

Q. Married men, too, at that?

A. Yes, sir; when I knew them as many years as I had him.

Q. Do you remember of appearing before the grand jury in the third district, when this case of your husband's was under investigation there?

A. Yes, sir.

Q. Do you remember of testifying there that you were married to the defendant on the 25th of January, 1886, in Salt Lake City?

A. Yes, sir.

Q. You remember refusing to answer the question whether or not before that time, at Logan, you entered into a marriage ceremony with him?

A. Yes, sir.

Q. Why did you refuse to answer that question?

A. Well, because I thought the legal wife could not be compelled to testify.

63 Q. Didn't you know that if you answered no, as you have here, that that would have tended to exculpate your husband?

Mr. RAWLINS: We object to that. The fact is that the witness did not decline to testify unless the court said the question was an improper one. The court held that it was not a proper question, and the matter was sent back, and they never asked her to answer the question.

The COURT: I understood her to say that she did refuse to answer.

Mr. DICKSON: Why did you refuse to answer that question, the answer to which, if your testimony is true, would have acquitted your husband of any offense?

Mr. RAWLINS: The last part of that question we object to. She cannot testify to that. She is not supposed to know.

The COURT: Mr. Reporter, please read the question, will you? (Question read by reporter.)

The COURT: Mr. Dickson, if they challenge that part of the question, isn't it best to ask her first if she didn't know that would be the effect of it?

Mr. DICKSON: Why did you refuse to answer that question?

WITNESS: On the ground, as I said before, that I didn't think a legal wife could be compelled to testify.

Q. That was your only reason?

A. Yes, sir.

64 Q. Didn't you know that if you answered that question by saying no, you never were married to him before, it would not harm, but, on the contrary, would help, your husband?

A. No, sir; I didn't know that.

Q. You claimed before the grand jury that you were married to him after he was divorced from his first wife?

A. Yes, sir.

Q. You knew he had committed no offense, then?

A. I supposed so.

Q. That there was no offense in that? Now, supposing there was no offense in his marrying you after he was divorced from his lawful wife, and knowing that that was the only time he had married you or gone through any marriage ceremony with you, didn't you know that if you had said no, I never married him before, it would not have harmed your husband, but would have helped him?

A. No, sir; I didn't know it at that time.

Q. How could you think that such an answer to the grand jury, that you never married him before, could hurt him?

A. I never was before a grand jury before and didn't know what they would do.

Q. How did you imagine that your answer before the grand jury, that you never married this man before the 25th of January, 1886, could harm your husband?

65 Objected to as immaterial. Objection overruled. Exception.

Q. How could you imagine that your answer to the grand jury, that you had never entered into any marriage ceremony with your husband prior to the 25th of January, 1886, could do him any possible harm?

A. I don't know.

Q. Did it occur to you that it might do him any harm to say that you never married him before?

A. No, sir.

Q. Couldn't you see and didn't you see that if the fact was that you never had married him before that time it could not harm him?

A. I don't know. I didn't think of it.

Q. You can give no other explanation of your refusal to answer that question before the grand jury?

A. No, sir.

Q. Were you ever in the Logan temple?

A. I was there in June.

Q. Were you ever in the Logan temple?

A. Yes; I was, in June, 1884.

Q. At any other time?

A. Not to my knowledge. I don't remember of having been in there again.

Q. Wouldn't you be likely to remember if you were there since June, 1884?

66 A. I think so.

Q. Will you swear that you were not there in August, 1884?

A. Yes, sir; I will swear to it.

Q. Will you swear that you were not there after June, 1884?

A. No; in fact, I guess I was there about in December, I think it was.

Q. Of what year?

A. 1884.

Q. Don't you know whether you were there or not at that time?

A. I think I was there in December.

Q. And in June?

A. Yes, sir.

Q. What time in June?

A. Along the latter part of June; I don't — what date.

Q. Are you sure it was in the month of June?

A. Yes, sir; I am sure—positive.

Q. Were you there at any other time?

A. In December.

Q. At any other time?

A. No, sir; I was not.

Q. Did you prior to the 25th of January, 1886, at any time or at any place, go through any form of marriage, for time or for eternity, or both, with Mr. Bassett?

A. No, sir; I never did.

67 Q. Or any form of marriage such as is recognized by your church—the Mormon Church—or by the law of the land?

A. No, sir; I never did.

Q. You swear to that?

A. Yes, sir; I swear to it.

Q. And yet you refused to answer that question before the grand jury?

A. Yes, sir; I did.

Q. As I understand you, from the 13th of the month to the last of each month Mr. Robbins used to take this book home?

A. I said he posted the books three times a month—on the first of the month, from the 13th to the 17th, and in the last of the month.

Q. And at such times you would keep memoranda on slips, of transactions, and would enter them on the book afterwards?

A. He would enter them.

Q. Sometimes you would?

A. Yes; when the book was brought back.

Q. How long did you say you had been employed in that store?

A. Between four and five years.

Q. When did you say you finally left that employment?

A. In February, 1885.

Q. I think you stated that you ceased to be employed there steadily after February, 1885.

68 A. Yes, sir; I was there off and on during the summer of 1885.

Q. What was the occasion of your terminating your employment in February, 1885?

A. I had very poor health, and I thought if I could get out of the store I would have better health.

Q. I think that one of the reasons you gave to Mr. Rawlins why you knew you didn't see Mr. Bassett in August, 1884, and why you knew that you were not away from the store during that month was that Mr. Robbins was very sick?

A. Yes, sir; confined to his room.

Q. During that month?

A. Yes, sir.

Q. Who else was employed in the store besides yourself?

A. I was the only clerk.

Q. Then the only persons about there was Mr. Robbins and yourself?

A. Yes, sir.

Q. Was anybody else there at all?

A. No, sir.

Q. How long during the month of August was he sick?

A. Three or four weeks.

Q. Was he sick from the 13th, say, to the 16th—about the middle of the month?

A. Yes, sir; he was very sick during the middle of the month of August.

69 Q. Confined to his bed?

A. Not confined to his bed, but to the room. He wasn't able to attend to business.

Q. Wasn't he out to the store?

A. No, sir; he might come into the store about once a day.

Q. I see, taking the 12th of August of that year, according to the items that you have identified here, that the first one, two, three of those items are entered in your hand?

A. Yes, sir.

Q. The next in Mr. Robbins'?

A. Yes, sir.
Q. The next one or two in yours?
A. Yes, sir.
Q. The next in Mr. Robbins'?
A. Yes, sir.
Q. The next in yours?
A. Yes, sir.
Q. The next in Mr. Robbins'?
A. Yes, sir.
Q. The next in Mr. Robbins'?
A. Yes, sir; he had the book down home.
Q. The first three are in yours, then one in his hand, his entry; the two next yours, the next in his, then one in yours, and the next in his; how do you explain that?
A. It is very easily accounted for; when he was in the store he would enter them.

70 Q. Didn't you say that he wasn't able to be in the store?
A. I said he would be there maybe once or twice a day.

Q. He seems to have been there frequently on the 12th; on the 13th I find the first, second, third, fourth, fifth, sixth, and seventh in Robbins' hand?
A. Yes, sir.
Q. And the eighth in yours?
A. Yes, sir.
Q. The ninth in Robbins'?
A. Yes, sir.
Q. The tenth in Robbins'?
A. Yes, sir.
Q. The eleventh in Robbins'?
A. Yes, sir.
Q. Items 12 to 17 in his and the 18th in yours again?
A. Yes, sir.
Q. And the 19th in Robbins' hand again?
A. Yes, sir.
Q. On the 14th, the first 13 in your hand?
A. Yes, sir.
Q. The 14th in Robbins'?
A. Yes, sir.
Q. 15th, 16th, 17th, 18th, and 19th in yours?
A. Yes, sir.
Q. The 20th in Robbins'?
A. No, sir.

71 Q. In yours? And the 21st, 22nd, 23rd, and 24th in yours?
A. Yes, sir.

Q. The 25th, 26th, 27th, 28th, 29th, and 30th in Mr. Robbins' hand?
A. Yes, sir.
Q. On the 15th the first entry, page 192, August 15th, is in your hand?
A. Mr. Robbins'.
Q. The second in his?

A. Yes, sir.
Q. Third in yours?
A. Yes, sir.
Q. Fourth yours?
A. Yes, sir.
Q. All the entries on page 193 are yours?
A. Yes, sir.
Q. The last entry on that date is his again?
A. Yes, sir.
Q. Was Mr. Robbins there attending to business in the store on those days?
A. He would come in once in a while.
Q. And when he came in he would make an entry once in a while?
A. Yes, sir.
Q. You were mistaken, then, when you said that he was too ill to attend to business and was confined to his room? You testified that he was too ill to attend to business and was confined to
72 his room?
A. Yes, sir; I did; but he would come in when he was ill.
Q. He wasn't too ill to attend to business?
A. He wasn't fit to come when he did come.
Q. Notwithstanding, he came and attended to business?
A. Yes, sir.
Q. For what purpose did you visit the Logan temple in June, 1884?
A. I went there to get my endowments.
Q. Did you contemplate marriage at that time?
A. No, sir; I did not.
Q. How old are you?
A. I am 25 years old.
Q. Then at that time you would be 23?
A. Yes, sir.
Q. When you went to the temple to get your endowments?
A. Yes, sir.
Q. Had you ever applied for them before?
A. No, sir; I never did.
Q. You understood that you could not be married in the temple without first having got your endowments?
A. Yes, sir; I think so; I don't know, though.
Q. You had no idea of entering into the marriage relation at 23, when you first applied for your endowments?
73 A. No, sir; I hadn't.
Q. Did you ever meet Mr. Bassett there?
A. No, sir; I never did.
Q. You visited Mr. Bassett in May, 1884?
A. I visited the house, but he was not at home; no, it was not May, 1884; it was before he went to Salt Lake City.
Q. What month was it?
A. I think it was in April.
Q. You had but a passing acquaintance with him then?

A. That is all. I was in company with another lady, who wanted me to go, and I went there with her.
Q. Had you been on visiting terms with the family before that?
A. No, sir.
Q. You were not on visiting terms with Mr. Bassett's wife?
A. No, sir.
Q. How long had she been in Logan at that time?
A. I guess she came with him.
Q. You were born in Logan and lived there until very recently?
A. Yes, sir.
Q. Have visits never been exchanged between your family and hers?
A. No, sir.
Q. Until you went there in April, 1884?
74 A. Yes, sir.
Q. Your husband is a member of the Mormon Church, is he not?
A. Yes, sir; he is.
Q. And has been ever since you knew him?
A. Yes, sir.
Q. You are also a member of the church?
A. I was raised in the church.
Q. And you are still a member of the church?
A. Yes, sir.
Q. You believe in the teachings of your church, I suppose?

Objected to as immaterial. Objection overruled. Exception.

A. Yes, sir.
Q. All of them?
A. As far as I am acquainted with them.
Q. You understand that polygamy is a tent of the faith?
A. Yes, sir.

Objected to as immaterial and irrelevant. Same record as above.

Q. You have understood that for a long time?
A. Yes, sir.
Q. And so far as you have understood the teachings of the church you have always believed in them?
A. Yes, sir; I have.
75 Q. Do you know from anything you heard your husband say whether he believed them also?
A. No, sir.
Q. You know that he holds the office of bishop in the church?
A. Yes, sir.
Q. How long has he held that office?

Same objection as above. Same ruling. Exception.

A. I think it was September.
Q. Of what year?
A. 1886.

Q. Do you know whether he held any office in the church before that?

A. No, sir; I do not.

Q. Have you ever heard him express his disbelief in any of the teachings of the church?

A. No, sir.

Redirect examination:

Q. I desire to call your attention to the occasion when you were before the grand jury, when you came into court and asked if you should answer the question, whether or not you stated to the court that if it was a proper question you were prepared to answer?

A. No, sir; I never made any statement at all. I was referred back to the grand-jury room and it was left there.

76 Q. And the questions were never propounded to you again?

A. No, sir.

ADAM SPIERS sworn for the defense:

Q. You were a justice of peace, I believe, on the 25th of January, 1886?

A. Yes, sir.

Q. In Salt Lake City and county?

A. Yes, sir.

Q. You were acquainted with the defendant, Mr. Bassett, at that time?

A. Yes, sir; I was.

Q. State whether or not you performed the ceremony of marriage between Mr. Bassett and the lady who was last upon the witness stand. If so, at what place and what time?

A. I did, at Salt Lake City, on the 25th of January, 1886.

Q. You married the defendant to the lady who was last upon the witness stand?

A. Yes, sir.

Cross-examination waived.

Mrs. KATE BASSETT recalled:

Mr. DICKSON: The Logan temple, at the town of Logan, in the county of Cache, is a temple of the Mormon Church, is it not?

A. Yes, sir.

Q. And where many of the ceremonies of the church are performed.

A. Yes, sir; I guess so.

Q. Where marriages are celebrated?

77 A. Yes, sir; I think they are to a great extent.

Q. Plural marriages and others?

A. I don't know anything about that.

Q. That is what you understand, that all kinds of marriages are performed there?

A. I suppose that.

A. That is all. I was in company with another lady, who wanted me to go, and I went there with her.
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A. No, sir.
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Q. Plural marriages and others?

A. I don't know anything about that.

Q. That is what you understand, that all kinds of marriages are performed there?

A. I suppose that.

Q. That has been your understanding?
A. Yes, sir.

Mr. DICKSON: That is all.

Mrs. EMMA BALIFF sworn for the defense:

Q. You are a sister of Mrs. Kate Bassett, are you?
A. Yes, sir.
Q. Did you and your sister live in the same house in 1884?
A. Yes, sir.
Q. And always lived there prior to that time?
A. Yes, sir.
Q. Since you were girls?
A. Yes, sir.
Q. How long after that time?
A. Until she left home.
Q. When did she leave home?
A. January 24th, 1886.
Q. Did she come to the city in October, 1884?
A. Yes, sir.
Q. You came with her?
A. Yes, sir.
Q. What was the occasion of your going to Salt Lake City at that time?
78 A. The Logan choir was invited to go to conference, and we all came down.
Q. You were members of the choir?
A. Yes, sir.
Q. What did you do after you got to the city? Where did you put up?
A. At the Valley House.
Q. Did you sleep with your sister at the Valley House?
A. Yes, sir.
Q. How many nights or during what portions of the time that you were in the city?
A. We were there at the Valley House most of the time. She stayed there three nights.
Q. Did you see Miss Kate Smith and Mr. Bassett together at any time?
A. No, sir.
Q. Did Mr. Bassett visit your house in Logan?
A. No, sir.
Q. At any time?
A. No, sir.
Q. Did you know, in 1884, of his paying any attentions to your sister Kate?
A. No, sir.
Q. With the exception of the occasions when she passed the nights at the Valley House in Salt Lake City where else did she stop?
A. She stopped two nights at Mr. Evans'.

Q. Were you there with her?

A. No, sir; my sister Florence stayed with her.

79 Q. Were you with her at the time she stopped at the Continental Hotel?

A. No, sir.

Q. She went to the theatre that night with your sister, did she?

A. Yes, sir.

Q. Your sister Kate was engaged in clerking in Logan in 1884 and until 1885?

A. Yes, sir.

Cross-examination waived.

Miss FLORENCE SMITH sworn for the defense:

Q. You are a sister of Mrs. Bassett, are you?

A. Yes, sir.

Q. You lived at home with her during 1884?

A. Yes, sir.

Q. At Logan?

A. Yes, sir.

Q. Up to what time did she continue to live at your home in Logan?

A. Until she left home, in 1886.

Q. During that time did Mr. Bassett pay any attentions to her or visit your house?

A. No, sir.

Q. Do you know of his associating with her during the time he lived in Logan?

A. No, sir.

Q. Was there any intimacy between the families at all?

A. No, sir.

80 Q. Did you accompany the choir with your sister to Salt Lake City about October, 1884?

A. Yes, sir.

Q. Did you sleep with her during the time she stopped in the city?

A. Yes, sir.

Q. Every night?

A. Yes, sir.

Q. Where did you put up?

A. Two nights at Mrs. Evans', one at the Continental, and the rest at the Valley House.

Q. Did Mr. Bassett visit your sister at any time there?

A. No, sir.

Q. I believe you are well acquainted with Mrs. Evans?

A. Yes, sir.

Q. That was the reason you went there?

A. Yes, sir.

Q. Were you with Kate all the time; were you and she together?

A. Yes, sir; every night. I was the youngest sister, and she kept me there under her care all the time.

Q. You were together all the time?
A. Yes, sir.
Q. Mr. Bassett, as I understand you to say, didn't visit her?
A. No, sir; he never did.
81 Q. During any part of the time you were there?
A. No, sir.
Q. Do you know what, if anything, was the repute in your family as to whether Kate had been married in 1884?
A. No, sir; there never was anything; she was always held up as our sister.
Q. As being unmarried?
A. Yes, sir.

Cross-examination:

Q. You say she was held up as being unmarried?
A. Yes, sir.
Q. She always was your sister?
A. Yes, sir.
Q. She is your sister still?
A. Yes, sir.
Q. Was there any repute in the family that she was or was not married, one way or the other?
A. No, sir.
Q. That is all you mean to say, isn't it?
A. Yes, sir.
Q. When did you first know of the defendant paying attention to your sister?
A. I didn't know until she was married.
Q. Not until the 24th of January, 1886?
A. No, sir.
Q. Never knew of any courtship until then?
A. No, sir.
Mr. RAWLINS: Where were you at the time she was mar-
82 ried?
A. At home.
Mr. DICKSON: Yet you never knew of Bassett coming there to see her?
A. No, sir.
Q. Or coming there to associate with her at all?
A. No, sir.
Q. Prior to the day of his marriage?
A. No, sir.

Mrs. LUCY CARDON sworn for the defense:

Q. You are a sister of Mrs. Bassett?
A. Yes, sir.
Q. You were in the city in October, 1884?
A. Yes, sir.
Q. And stopped with your husband at the Continental Hotel?
A. Yes, sir.

Q. How much of the time were you with your sister or in her company?

A. We all belonged to the Logan choir, and came down as a choir. My husband being sick the day the choir started from Logan, we waited until the next day, and when we got down the Valley House was full, so we put up at the Continental. She stopped with us one night.

Q. Did you ever see her in company with Mr. Bassett?

A. No, sir.

Q. Were you living at home in 1884?

A. No, sir.

Q. Did you know of Mr. Bassett paying any attention to
83 your sister in 1884 or prior to that time?

A. No, sir.

Q. In 1884 and until 1885 was your sister engaged in clerking in a store at Logan?

A. Yes, sir.

Q. Mr. Robbins was the superintendent of the store?

A. Yes, sir.

Cross-examination:

Q. Where do you live?

A. In Logan.

Q. And have been living there for some years?

A. Yes, sir; 26 years.

Q. How far from where your sister Kate lived?

A. Four blocks.

Q. You never knew of the defendant paying any attentions to your sister before his marriage?

A. No, sir.

Q. You didn't know that a marriage was contemplated between them until they were married?

A. No, sir.

Q. When did you first hear that she was married?

A. Some time in the latter part of January, 1886.

Q. Had you ever heard any rumor of it before that?

A. No, sir.

84 Q. Down to the time that you heard they were married—the latter part of January, 1886—you knew of no attentions being paid to her by him?

A. No, sir.

Q. You had no idea that she was to be married?

A. No, sir.

Mrs. HARRIET ROBBINS sworn for the defense:

Q. You are the wife of Mr. Robbins, who had charge of the store at Logan?

A. Yes, sir.

Q. You know Mrs. Bassett—Miss Kate Smith that formerly was?

A. Yes, sir.

Q. Was she engaged in clerking at the store in Logan of which your husband was the superintendent?

A. Yes, sir.

Q. During the whole of the year 1884?

A. Yes, sir.

Q. At what hour did she usually come to the store and what time did she usually go away?

A. From half past 7 in the morning until 8 or half after, generally. If they were marking goods she would be there later. Usually half past 7 in the morning to 8 o'clock at night.

Q. How near did you live to the store?

A. Just next door.

Q. Did she take her meals or dinners at your house?

A. Yes, sir.

85 Q. Did you know about the time she would come and go away from the store?

A. Yes, sir.

Q. When did she come to dinner?

A. From 12 to 1.

Q. Did you ever see Mr. Bassett at the store—that is, visiting Miss Smith—at any time?

A. No, sir.

Q. How continuously was she engaged in the store during 1884?

A. All the time during those hours.

Q. Do you know of any occasion when she was absent?

A. I know once. It was when she came down with the choir that fall. Mr. Robbins' health was very poor that summer, and she was kept very close.

Q. Was there any other person to take charge of the store beside Mr. Robbins and her?

A. No, sir.

Q. During the time he was sick did he go into the store at all?

A. He was in and out of the store once in awhile.

Q. Is this the book in which the business transactions of the store were kept?

A. Yes, sir.

Q. You have been in the habit of keeping some of the accounts in the book yourself?

86 A. Yes, sir.

Q. What was the habit in regard to making entries there? Do you know?

A. Well——

Q. Do you know what the course of business was at that time in the store? Were you frequently in the store?

A. Yes, sir.

Q. I will ask you as to what the course of business was in regard to making entries.

Mr. DICKSON: Do you know of your own knowledge what the course of business was?

A. I know of my own knowledge.

Q. Did you have anything to do with the keeping of the books?

A. No, sir.
Q. Did you ever make any entries?
A. No, sir; never until Miss Smith left.
Q. Up to that time you never had anything to do with the books at all?
A. No, sir.
Q. You would see Mr. Robbins making the entries?
A. Yes, sir; at the house.
Q. And sometimes making entries at the store?
A. Yes, sir.
Mr. RAWLINS: He made some of those entries at the house?
A. Yes, sir.
87 Q. How soon after the transaction would the entry be made in this book?
A. Sometimes right away; sometimes in a few hours. I have brought the slips down to him from the store myself.
Q. That is, when Miss Kate Smith would make sales and put it down on slips, and those slips were taken to Mr. Robbins, he would make the entries in the book?
A. Yes, sir.

Cross-examination:

Q. How long since Kate Smith was last employed at the store?
A. She was there until the fall of 1885.
Q. What time in the fall?
A. Some time in January, I think, or February.
Q. You mean 1886?
A. I mean 1886. She was constantly employed until 1885; then she was there off and on for a few weeks a few days at a time.
Q. Up to the time of her marriage?
A. I know nothing of that—of her marriage.
Q. Up to January, 1886?
A. Yes, sir.
Q. Did you ever see the defendant at the store?
A. Never, but once.
Q. When was that?
A. It was in the morning, as he was going to work.
Q. When was that?
88 A. It was quite a while before he moved to Salt Lake City.
Q. Before August, 1884? He moved to Salt Lake City in April or May, 1884.
A. I believe so. I don't know anything about that.
Q. About how long before he moved away was it?
A. Perhaps a year; something like that.
Q. That is the only time you ever saw him there?
A. Yes, sir.
Q. Didn't you see him there in April of 1885 or January of 1886?
A. No, sir.
Q. When did you first hear that the defendant was married to Kate Smith?
A. It is six or seven months ago, I believe, since I heard it.

Q. Didn't you hear of it long before that?
A. I have just heard it rumored.
Q. Long before that?
A. No, sir.
Q. Long before January last?
A. No, sir.
Q. January of last year?
A. No, sir.
Q. Didn't you hear it prior to that?
A. No, sir; I never heard anything of the kind.

89 Q. Are you quite sure of that? Just stop and think a little while if you didn't hear the rumor that Kate Smith was married to this defendant before she finally left that employment.

A. No, sir; I never heard anything of the kind.
Q. Did you ever speak with the defendant about it?
A. No, sir; Mr. Bassett is a stranger to me.
Q. You didn't hear of it until some four or five months after last January?
A. No, sir.

JOSEPH E. WILSON sworn for the defense:

Q. You are acquainted with the defendant, Mr. Bassett, are you?
A. Yes, sir.
Q. How long have you known him?
A. Since 1879, I believe.
Q. He continued to reside in Logan, I believe, up to some time in the spring of 1884?
A. Yes, sir.
Q. During the time that he lived at Logan, in what business was he engaged—what occupation?
A. He was tithing clerk.
Q. Did you succeed him as clerk after he left there?
A. Yes, sir.
Q. Do you remember any occasion when he visited there in August, 1884?
A. Yes, sir.

90 Q. State, if you know, the purpose of his visit there and what he did while he was there at that time.

A. I will say that the books there were somewhat complicated, and I had only a few days' chance when he was called away to Salt Lake City to get an insight into the business; therefore I run across some difficulties. It was necessary for me to have some assistance and I sent for him. He also came up there on business for Bishop Preston, as I understand. He was inquiring concerning the wheat in the valley—the amount of wheat—as the church wanted to dispose of it, and he was looking into the books and was in and out there.

Q. What portion of the time was he at your office?
A. Well, he was in every day for three or four days.
Q. Do you remember about the time, the date, that he was there?
A. I think it was about the middle of August.

Q. During the time that he stayed, what, if anything, did he do in the way of assisting you in respect to the accounts turned over?

A. Well, he was showing me some of the difficult points in regard to the accounts and how to proceed with them, and so on.

Cross-examination:

Q. What were the difficult points?

A. Tithing accounts are peculiar—very peculiar.

91 Q. I can understand that; but what were the difficult points?

A. The difficult points are more easily told about than explained.

Q. Just explain some of the difficulties in the accounts.

A. Well, in the manner of closing some of the accounts; they were left unclosed.

Q. Some of the accounts that were closed were left unclosed? How do you explain that?

A. He had been called away so suddenly he hadn't time to close them.

Q. Were the entries there debits and credits?

A. Yes, sir.

Q. Couldn't you close them up by entering up the debits and credits and striking a balance?

A. If I had the books so I could understand them, I might.

Q. Just explain. I understand you that some of the accounts were not closed when Mr. Bassett left, but the entries were there; there stood the accounts, with their debits and credits?

A. There were some entries omitted that should have been made.

Q. How do you know that?

A. From the things he told me at the time he left me.

Q. Why didn't you enter them?

92 A. I couldn't get at the facts in the case. He had memoranda laid away where I couldn't find them.

Q. He was there two or three times after you took charge?

A. Yes, sir; working a good deal of the time, posting up.

Q. That is, there were some entries to be made from recollection?

A. Yes, sir; and some details he had on memoranda that I didn't understand.

Q. You didn't know of the existence of those if they were laid away where you couldn't find them?

A. I learned afterwards.

Q. They were laid away and when he came back he found them?

A. He found them.

Q. Before he came back you didn't know anything about them?

A. I understood those accounts needed closing.

Q. What accounts?

A. Some accounts of the church herd there.

Q. Weren't the entries in the book?

A. Such as I have explained.

Q. Ready to be closed?

A. Not ready to be closed without some assistance.

Q. In what respect?

93 A. Some knowledge he had in his head not in the book.

Q. How do you know he had knowledge in his head not in the book?

A. Because he told me before he went away. He made the request for me to make some entries, to do certain work, and after he had gone there had been so much crowded on my mind it slipped my mind as to how to proceed.

Q. How long was he in Logan in August, 1884, to your knowledge?

A. I couldn't say; I can't distinctly remember, but it was three or four days.

Q. Had you written to him to come?

A. Yes, sir; I had written to him concerning the accounts.

Q. Did you write to him to come up or to send you an explanation?

A. I wrote him to do one or the other.

Q. He was there some four days, do you say?

A. I think so.

Q. He didn't spend all that time in the tithing place?

A. No, sir; he had some business unclosed of his own that he was attending to, I believe.

Q. You don't know what that business of his own was, to your own knowledge?

A. No.

94 Q. All that you did know was that he was in and out of the store for three or four days?

A. He spent most of his time there.

Q. How much of his time?

A. Well——

Q. I understood you to say, in answer to Mr. Rawlins, that he was in and out for three or four days?

A. Yes, sir.

Q. He was hardly there as much as a regular working hand would be, was he?

A. Well, I don't suppose he was.

Q. Were you there all the time?

A. Yes, sir.

Q. About how much of the time—how many hours did he spend there continuously?

A. Well, maybe he would spend three or four hours at a time.

Q. Where he was the balance of the day you wouldn't know if you were in the tithing office yourself?

A. No, sir; I didn't go out with him every time.

Redirect:

Q. Did Mr. Bassett at the time he left there own property?

A. Yes, sir.

Q. Did you know that he had been making an effort to dispose of it and close up his business?

95 A. Yes, sir; I was aware of that.

Q. I suppose you had quite a number of different accounts to keep—stock accounts, grain accounts, and so forth?

A. Oh, yes; quite a number, and all these things made the work quite laborious.

Recross-examination:

Q. What property had he there, to your knowledge, when he left?

A. He had a lot and homestead and home and a piece of land beside, near the centre of the town.

Q. What property had he there, to your knowledge, when he left?

A. A house and lot and a piece of property beside—a piece of real estate near the centre of the town and some hay land.

Q. Did he ever dispose of it, to your knowledge?

A. He disposed of the hay land, to my knowledge.

Q. He disposed of that in July, didn't he?

A. I couldn't say just when.

Q. Didn't he dispose of all the property that he did dispose of prior to August, 1884?

A. I don't know.

Q. The homestead the wife Sarah now occupies?

A. Yes, sir.

Q. All the property he did dispose of was prior to that time?

A. I couldn't say.

96 Q. Then, you don't know that he was there trying to dispose of property in August?

A. I couldn't positively say as to that.

DAVID GRIFFITH sworn for the defense:

Q. In 1884 and 1885 you kept a restaurant in Salt Lake City?

A. Yes, sir.

Q. During that time did the defendant, Mr. Bassett, take his meals at your place?

A. Yes, sir.

Q. State particularly what time he took his meals there.

A. He commenced to board at my place regularly about the latter part of August, or from the middle of August, in 1884, until April the 11th of 1885.

Q. Was he absent during any portion of that time—that is, did he take his meals there every day during that time?

A. I think he took his meals there every day. I don't remember him being away.

Q. You closed out your place on the 11th of April?

A. Yes, sir—1885.

Q. Do you know where Mr. Bassett went to board when you ceased to carry on your place?

A. I believe he went to Mr. Gallagher's.

Cross-examination:

Q. You, of course, could not testify that he was not absent a day during all that time?

97 A. I wouldn't be positive.

Q. He might have been away a day or two without you being able to recollect it?

A. Yes, sir.

Q. The same as any other boarder at your restaurant?

A. Yes, sir. I wouldn't swear that he was there every day.

Mrs. DAVID GRIFFITHS sworn for the defense:

Q. Did Mr. Bassett, the defendant, board with you from about August, 1885, until April, 1885?

A. Yes, sir. He came, I believe, about the middle of August, 1884, and he was to our house every day until we closed.

Cross-examination:

Q. What were your duties there?

A. I was mostly in the dining-room.

Q. How many boarders did you have?

A. We kept a restaurant.

Q. How many patrons did you have?

A. We were very busy some days; some other days not so busy.

Q. You would average how many?

A. Oh, 150 to 200.

Q. Were they all there every day?

A. No, sir; not all of them. We had a few regular boarders.

Q. About how many, on an average?

98 A. Probably 30 or 40.

Q. Were they all there every day?

A. Mostly. There was clerks and others that were never away without it was holiday time.

Q. Never away except for a short time?

A. No, sir.

Q. Can you be any more positive about Mr. Bassett taking his meals there every day than you can of any of the other boarders?

A. Yes, sir.

Q. Why?

A. Because Mr. Bassett used to eat with us at our table?

Q. With you and your husband?

A. Yes, sir.

Q. Did any other regular boarders do that?

A. No, sir.

Q. Did he always do that?

A. Yes, sir. He commenced on Sunday. That Sunday he had his supper or dinner, I forget which, with us, and he ate with us all the time.

Q. You were at home all the time yourself, were you?

A. Yes, sir.

JOHN GALLAGHER sworn for the defense:

Q. Did you keep a restaurant in Salt Lake City at one time?

A. Yes, sir.

Q. And still do so?
99 A. Yes, sir.
Q. Are you acquainted with Mr. Bassett?
A. I know him by having come there to eat.
Q. When did he first begin boarding at your place?
A. I judge about the middle of April, 1885.
Q. How long did he continue to board at your place?
A. For over a year.
Q. Do you know of his being absent any part of that time?
A. I couldn't swear to his being there every day because I had charge of the kitchen and didn't see him there every day.
Q. What about his regularity in coming there?
A. I think he was there pretty regularly.
Q. Do you know of any occasion when he was absent?
A. No; I couldn't tell you of any.

Cross-examination:

Q. He might have been absent a number of days?
A. Yes, sir.
Q. He commenced there in April, 1885, and boarded there for over a year?
A. Yes, sir.
Q. Did anybody else board with him?
A. Not with — except Mrs. Bassett. She came there, I think it must have been in January, 1886, or somewheres around
100 there. I couldn't exactly tell the date.
Mr. RAWLINS: Had you ever seen her before that occasion?
A. Not to my knowledge.
Mr. DICKSON: But whether she was there before that you couldn't say?
A. No, sir.
Q. How regular the defendant was in eating there before that time you could not say?
A. No, sir.
Q. He might have been away a day at any time in the month?
A. Yes, sir; he might have been away and me not know it.

A. HILTON sworn for the defense:

Q. How long have you been acquainted with Mr. Bassett?
A. Ever since 1884, in April, is the first time I ever saw him.
Q. Since April, 1884, what has been his business?
A. Chief clerk for Mr. Preston, at Salt Lake.
Q. At the tithing office?
A. Yes, sir.
Q. You have been the night watchman there?
A. Yes, sir; for over four years.
Q. Your duty was to be awake during the nights there?
A. Yes, sir; we were not allowed to be asleep at all.
101 Q. Did Mr. Bassett at one time sleep at the tithing house? Did he have a bed-room there and a bed?

A. Yes, sir.
Q. When did he begin that first?
A. Some time in the latter part of August, 1884, he commenced to stay there.
Q. How long did he continue to stay there?
A. Over a year.
Q. Up to what time did he stay there, according to your best recollection?
A. About January some time, 1886.
Q. How regular was he there nights?
A. He was there all the time, for anything I know.
Q. You don't know of any occasion when he was absent?
A. No, sir.

Cross-examination:

Q. Do you mean that you don't know of any occasion when he was absent along in January, 1886?
A. No, sir; I never took any notice of him being away at all.
Q. You think he was there every night?
A. I think he was.
Q. Do you know anything at all about how regularly he stopped there?
A. He was there regularly when I was there.
Q. Were you there all the time?
102 A. All but four nights, when I was hurt and laid off.
Q. Do you mean to say that, with the exception of those four nights, Mr. Bassett slept there every night from August, 1884, to January, 1886?
A. Yes, sir.
Q. Then if he courted Kate Smith at all he never went out of town to court her?
A. I never seen Kate Smith; she is a perfect stranger to me.
Q. When were those four nights when you were not there?
A. I really couldn't say what time it was.
Q. Give us your best recollection.
A. He commenced there in August, 1884. I believe that was sometime in the summer of 1885. I was off four nights—I got hurt.

SUSANNA CARDON sworn for the defense:

Q. You were the proprietor of a hotel in Ogden known as the Cache Valley House in 1884, in August?
A. Yes, sir.
Q. In Logan, I mean?
A. Yes, sir.
Q. You are acquainted with the defendant, Mr. Bassett, are you?
A. Yes, sir.
Q. Did he stop at your hotel in 1884, in August?
A. Yes, sir.
Q. How did he come there? When did you first see him?
103 A. He came up in my carriage from the depot.

Q. You have a carriage running in connection with the house from the depot?
A. Yes, sir.
Q. Did he go away in it?
A. Yes, sir.
Q. About how long was he there?
A. I think that the first time he went he was about two or three—.
Q. I am asking as to August.
A. I think he was about three days, if I remember right—two or three days.
Q. Did he pass his nights at your house?
A. Yes, sir.
Q. You had charge of the making of the beds where he slept, had you?
A. Yes, sir.
Q. Was he there every night, according to your recollection, after he came until he went away?
A. Yes, sir.
Q. Did he have any lady with him there during that time?
A. No, sir.
Q. Did he take his meals at your house during that time?
A. Yes, sir.
Q. Did he ever have any lady visit him there?
A. No, sir.
104 Q. Did you know Miss Kate Smith, as her name then was?
A. Yes, sir.
Q. Was she there to see him at any time?
A. No, sir.

Cross-examination:

Q. Have you referred to your books to ascertain how long he was there?
A. No, sir.
Q. Or when he came there?
A. No, sir.
Q. How do you know he was there in August?
A. Because I remember it.
Q. When were you first spoken to about his having been at your house in August, 1884?
A. I was acquainted with him.
Q. You didn't understand me. Did you ever tell anybody that Mr. Bassett was at your house in August, 1884?
A. Not that I know of.
Q. Did anybody ever ask you if he was there before you were put on the witness stand?
A. No, sir.
Q. Any of the attorneys here, didn't they ask you if you remembered him being there in August, 1884?
A. No, sir; none of these gentlemen did.
Q. Did anybody else ask you?
A. No, sir.

105 Q. Did anybody ever speak to you about it before you got up there on the witness stand?

A. I was called upon to come.

Q. By subpœna?

A. Yes, sir.

Q. Did anybody ever before ask you whether you remembered Mr. Bassett being in your house in August, 1884?

A. No, sir.

Q. Then you didn't know when you took your seat here what you were going to testify about?

A. No, sir; I heard that I was called here for Mr. Bassett. That is all I knew.

Q. You didn't know what you were called here to testify about?

A. No, sir.

Q. You simply understood that you were called here as a witness for Mr. Bassett?

A. Yes. sir.

Q. But what you were expected to testify about you didn't know?

A. No, sir.

Q. Had you no intimation about it?

A. No, sir.

Q. And without any reflection, just as the question is plumped at you, you know he was there in August, 1884, for three or four days?

A. Yes, sir.

Q. Didn't have to stop and think about it?

A. No, sir.

106 Q. You are not up all night about the house, are you?

A. Well, I know that he slept at my house.

Q. You go to bed, too, don't you?

A. Yes, sir.

Q. You go to bed, I suppose, pretty early, tired with the day's work?

A. Sometimes I go early and sometimes late.

Q. Do you remember whether you went to bed early while Mr. Bassett was there?

A. It was in the summer time, and I generally go to bed early, because there is work to be done in the morning early.

Q. Pretty soon after dark you go to bed, don't you?

A. Sometimes, when I feel like it.

Q. Do you remember whether you felt like it while Mr. Bassett was there?

A. Sometimes I did feel like it while Mr. Bassett was there.

Q. Do you remember whether you went to bed early while he was there?

A. No; I don't keep that in mind.

Q. You do know, however, that in the summer you usually went to bed soon after dark, when your day's work was done?

A. Yes, sir; I go to bed when my boarders do.

Q. Do you make your boarders go to bed right after dark?

A. No, sir; they stop up as long as they like to.

107 Q. Of course, you couldn't know whether anybody came into the house after you had gone to bed?

A. Yes, sir.

Q. How?

A. Because they couldn't come through the house without opening the door.

Q. Couldn't Mr. Bassett or any other guest open the door? If you were asleep it might be done without your knowledge?

A. If I was asleep I left somebody in charge. They would have to ring the bell.

Q. Couldn't anybody on the inside open the door and go out in the night if they wanted to?

A. Well, if they wanted to go out they would generally open the door.

Q. They didn't call you?

A. Well, you didn't suppose they were going to call a lady out of bed? I have got my sons.

Q. No; but if any of your guests want to go out of the house after you have gone to bed they can do so without your knowing anything about it?

A. I suppose they could.

Q. And come in again without your knowing it?

(No answer.)

THOMAS B. CARDON sworn for the defense:

Q. When you were in Salt Lake City, at the Continental Hotel, do you remember an occasion when Miss Kate Smith, as her name then was, stayed all night at the hotel?

108 A. Yes, sir.

Q. You went up to Mrs. Evans' for her?

A. Yes, sir. My wife and I called upon her one evening.

Q. And you went to the theatre, then to the hotel, and stayed there all night?

A. Yes, sir.

Q. Did you see Mr. Bassett at the hotel?

A. No, sir.

Q. Or in company with Miss Smith?

A. No, sir; I didn't see Mr. Bassett at all.

Q. You live in Logan?

A. Yes, sir.

Q. Did you ever know of Mr. Bassett paying any attention to Miss Smith prior to 1885?

A. No, sir; I never noticed them being together.

Cross-examination:

Q. You say you don't know of his paying any attentions to her prior to 1885. Do you know of his paying any attentions to her during 1885?

A. I understood the question to be if I knew——

Q. Mr. Rawlins' question was if you knew of Mr. Bassett paying any attentions to Miss Kate Smith prior to 1885.

A. I understood the question to be when Mr. Bassett paid any attentions to Miss Kate Smith. I answered no. I didn't understand it was in 1885.

109 Q. If it was prior to 1885 your answer would still be no?

A. Yes, sir.

Q. And if during 1885 it would still be no?

A. Yes, sir.

Q. You never knew of his paying any attentions to her at any time?

A. No, sir.

Defense rests.

Mr. DICKSON: I wish to recall Mrs. Robbins to ask her one or two questions in cross-examination.

Witness, Mrs. ROBBINS, recalled:

Q. Are you a member of the Mormon Church?

A. Yes, sir.

Q. Your husband is also?

A. Yes, sir.

Q. You believe in its doctrines?

A. Yes, sir.

Q. And he does?

A. Yes, sir.

Mr. DICKSON: That is all.

Mr. RAWLINS: We rest.

The foregoing was all the evidence in the case.

Mr. DICKSON: I believe we do, too.

The COURT to the jury: Gentlemen, now the time has come for an adjournment of this case until to-morrow morning, and, as you see, the case is one that excites a good deal of interest—people seem to take a good deal of interest in it—and no doubt the parties

110 directly concerned have a great and deep interest in the case. See to it that nobody talks to you or in your hearing or presence about the case, and that you don't come to any conclusion about it yet. Jurors should avoid the appearance in this respect of anything out of the way in relation to it, and should not talk about it during the trial of the case to parties interested in the case or to interested witnesses.

I learn, and it has been mentioned to me, not as a matter of suspicion at all, that one of the jurors did meet and greet in a friendly way some of the parties interested in the case, either yesterday or the day before. I don't remember the name of the juror now. I am reminded that it was Mr. Burrows who was talking to the defendant. Mr. Borrows, do you remember meeting the defendant yesterday?

Juror BORROWS: Mr. Bassett?

Q. Yes.

A. I just met him and shook hands with him; there was nothing more.

Q. That was all there was of the circumstance?
A. Yes, sir.
Q. You are acquainted with him, are you?
A. By sight; that is all.
Q. Only acquainted with him by sight?
A. That is all.

111 Q. Did you ever live in the same neighborhood with him?

A. I lived in Logan at the time he did.
Q. Then you are old acquaintances?
A. If you can call him old acquaintance, knowing him by sight.
Q. Was that the first time you have seen him to speak to him since he has been here?
A. Yes, sir.
Q. That is the only time?
A. Yes, sir.
Q. You haven't seen him to talk to him since?
A. No, sir.
Q. There was no private talk between him and you at all?
A. No, sir.

The COURT: Well, I hope jurors will avoid even the appearance of anything of that kind, because the parties interested are always Argus-eyed about things of that kind, and inclined to be a little jealous about it, and keep watch for things of that kind. It is the appearance we have to avoid as well as the fact itself. Talking with any of the parties interested in the case or any of the principal witnesses in the case or anybody who takes an interested part in the case, on either side, in any way, while it might not do any actual harm it might make people feel that there is a little something about it that there ought not to be.

112 Mr. BORROWS: The case was not mentioned at all.

The COURT: You gentleman can be discharged until 10 o'clock to-morrow morning.

Court adjourned until to-morrow at 10 a. m.

THURSDAY, *January 6th*, 1887—10 a. m.

Jury addressed — Mr. Hiles for the prosecution and by Mr. Rawlins on the part of the defense. At 12.30 p. m. jury admonished by the court and recess taken until 2 p. m.

2 O'CLOCK P. M.

Concluding argument made to the jury by Mr. Dickson, for the prosecution.

Charge of the Court to the Jury.

GENTLEMEN OF THE JURY: The indictment in this case is brought under section 1 of an act of Congress approved March 22, 1882, known as the Edmunds act, and reads as follows:

"Every person who has a husband or wife living who, in a Territory or other place over which the United States have exclusive

jurisdiction, hereafter marries another, whether married or single, and any man who hereafter simultaneously or on the same day marries more than one woman in a Territory or other place over which the United States have exclusive jurisdiction is guilty of polygamy."

113 The indictment charges the defendant with the crime of polygamy, committed as follows:

That on or about the 2nd day of May, 1872, at the town of Cardiff, in Wales, in the Kingdom of Great Britain, the defendant entered into a legal marriage with one Sarah Ann Williams, and that thereafter, while she was still alive and his lawful wife, and on or about the 14th day of August, 1884, in the county of Cache, in this district and Territory, he married one Kate Smith.

In order to convict the defendant the prosecution must show beyond a reasonable doubt—

First. That the defendant, on or about the 2nd day of May, 1872, at the town of Cardiff, in Wales, in the Kingdom of Great Britain, married Sarah Ann Williams, and that it was a legal marriage.

Second. That on or about the 14 day of August, 1884, at the county of Cache, in this district and Territory, he married Kate Smith by entering into such a marriage contract with her as would be legal but for the previous marriage with Sarah Ann Williams.

Third. That at the time of such last marriage the said Sarah Ann Williams was still the defendant's lawful wife.

As to the first marriage, the one with Sarah Ann Williams, it may be shown to have taken place by any evidence which

114 carries conviction to your minds, and if you find, beyond a reasonable doubt, that a marriage in form was entered into, followed by cohabitation, then the presumption is that it was a legal marriage, and this presumption would prevail until the contrary appears.

As to the second marriage, the prosecution must show, beyond a reasonable doubt, that on or about the time and at the place stated, he married Kate Smith. In determining whether he did enter into such marriage you may consider all the circumstances shown in this case. It is purely a question of fact for you to determine.

It is claimed by the defense that the defendant was divorced from Sarah Ann Williams on or about the 15th day of January, 1886, and that after that and on or about the 25th day of January, 1886, he married Kate Smith, and that she is now his lawful wife. But it is claimed by the prosecution that there was a marriage between the defendant and Kate Smith, as charged in the indictment, before the date of such divorce. And I instruct you that the divorce proceedings put in evidence here dissolved the marriage between the defendant and Sarah Ann Williams on the 15th day of January, 1886, and that the defendant cannot be convicted for any

115 marriage or cohabitation with Kate Smith after the 15th day of January, 1886; but before you can convict you must find, as claimed by the prosecution, a marriage with Kate Smith before that time, but you may consider all the relations between the defendant and Kate Smith and all other circumstances shown in evi-

dence in determining whether such prior marriage with Kate Smith was entered into as charged in the indictment.

You are instructed that to establish the fact of such prior marriage with Kate Smith it is not necessary to produce a marriage certificate nor any record evidence; neither need eye-witnesses to the ceremony be sworn to the fact, but marriages may be proven like any other fact—by proof of the deliberate declarations of the defendant—if such proof satisfies your minds beyond a reasonable doubt of the existence of such fact. In this Territory there is no law regulating marriage; no form or ceremony is required, and no record is kept. If the parties are competent to contract, all that is essential is a present agreement. The marriage is complete when there is a full, free, and mutual consent by the parties capable of contracting, though not followed by cohabitation.

116 If, therefore, you believe from the evidence beyond a reasonable doubt that on or about the 14th day of August, 1884, the defendant, by any form of marriage contract or ceremony or agreement, entered into a marriage with Kate Smith, and that he then had a lawful wife living, to wit, Sarah Ann Williams Bassett, you should find him guilty as charged in the indictment, even though you might believe that actual cohabitation by defendant and Kate Smith as husband and wife did not follow till after the 25th of January, 1886.

The prosecution has given evidence tending to show confessions of the defendant that he had entered into a marriage contract with Kate Smith. Evidence of confessions or admissions when idly made or loosely reported are entitled to but little weight, but when deliberately made, precisely identified, and accurately reported they constitute evidence of a most satisfactory character in establishing the particular fact confessed.

As to whether a confession was made and, if made, what weight should be given to it is for you to determine. In determining what weight should be given to the confession you should consider all the circumstances surrounding it and under which it was made (if it was made at all). The weight of confession should be deter-

117 mined by the presence or want of corroborating facts and circumstances. Aside from the confession itself, the conduct of the defendant and his actions, both at the time — and after the alleged confessions, as shown in evidence, may be examined to determine whether they are corroborative or not; also the defendant's inclinations and disposition with reference to the fact alleged to have been confessed.

As to the fact that at the time of the marriage with Kate Smith Sarah Ann Williams was still his lawful wife, it is not denied by the defendant that Sarah Ann Williams remained his lawful wife up to January 15th, 1886; so that if he was married in 1884 to Kate Smith, then this part of the case is established. You are the sole judges of the facts, of the credibility of the witnesses, and of the weight of the evidence; and in determining the credibility of the witnesses and the weight of the testimony you should take into consideration the appearance of the witnesses upon the stand, their ap-

parent candor or want of candor, their interest in the outcome of the case, their relation to the parties interested in any way, and all the facts and circumstances surrounding the witnesses. You are
118 not bound to believe the testimony of any witness or of any number of witnesses. You are to search for the truth, believing only such testimony as carries conviction to your minds of its truth. The defendant is presumed to be innocent until he is shown to be guilty beyond a reasonable doubt. By reasonable doubt is meant that the evidence must establish the truth of the charge to a reasonable and moral certainty—a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. It does not mean a mere captious, mythical, or speculative doubt, for everything depending upon evidence is open to some doubt; it must be a doubt founded upon reason and common sense; indeed, it must be a reasonable and not an unreasonable doubt.

Gentlemen, this case is to be determined by you conscientiously upon the testimony in the case and upon nothing else whatever. The defendant is not to be convicted by reason of any sentiment or belief of any persons outside of the jury-box; neither is he to be acquitted by any belief that it is oppressive to enforce the law; and, while it is your province to determine the facts, it is for the court to determine the law, and you should receive it as given to you
119 in open court, and in doing so you should not be influenced by arguments addressed to you that the court is enforcing doubtful and extreme legal rules. If the court is wrong upon any instruction given you it is to be corrected by other processes than having the jury disregard it.

There are two forms of verdict—one of guilty as charged in the indictment and the other of not guilty.

After verdict and before judgment the defendant regularly applied to the court for a new trial herein upon the following grounds, to wit:

1st. That the court misdirected the jury in matters of law and erred in the decision of questions of law which arose during the course of the trial.

2nd. That the verdict was contrary to the law and the evidence; which motion was overruled by the court, and exception to such ruling then and there duly taken by the defendant.

And the defendant now presents this his bill of exceptions and asks that the same may be allowed, which is done and, upon
120 his motion, ordered to be made part of the record in this case.

H. P. HENDERSON, *Judge.*

121 [Endorsed:] No. 984. First dist. court, Utah. The United States *vs.* William E. Bassett. Polygamy. Bill of exceptions. Filed Jan'y 19th, 1887. T. A. Perkins, clerk.

122 Endorsed: U. S. *vs.* Bassett. Transcript. Filed 2d Feb'y, 1887. E. T. Sprague, clerk.

123 WEDNESDAY, *February* 2*d*, *A. D.* 1887.

* * * * * * *

THE UNITED STATES, Respondent,
vs.
WILLIAM E. BASSETT, Appellant.

This cause, coming on for hearing, was argued by Messrs. Sheeks and Rawlins for appellant, Messrs. Dickson & Varian for respondents, submitted, and taken under advisement.

SATURDAY, *February* 26*th*, *A. D.* 1887.

* * * * * * *

THE UNITED STATES, Respondent,
vs.
WILLIAM E. BASSETT, Appellant.

This cause having been heretofore argued and submitted and the court being fully advised thereon, it is now here considered, ordered, and adjudged that the judgment of the district court therein be, and the same is hereby, affirmed.

Thereafter, on application of counsel of — in that behalf, — ordered that the amount of bond on writ of error removing this cause to U. S. Supreme Court, if taken, be and is fixed at $300.00.

124 In the Supreme Court of Utah Territory. January Term, 1887.

THE UNITED STATES OF AMERICA, Plaintiff and Respondent,
vs.
WILLIAM E. BASSETT, Defendant and Appellant.

ZANE, *C. J.:*

The defendant was convicted of the crime of polygamy in the first district court and sentenced to be imprisoned for the term of five years and to be fined in the sum of $500. From this judgment the defendant has appealed.

Among the jurors called was one Andrew Larsen, who, in answer to a question put to him upon his *voir dire*, said that he had lived in the practice of polygamy, but had ceased to do so almost seventeen years before. He also produced a pardon by the President of the United States, extending to him amnesty, in the following words:

"Chester A. Arthur, President of the United States of America, to all to whom these presents shall come, Greeting:

Whereas Andrew Larsen, of the Territory of Utah, having been guilty of bigamy or polygamy and unlawful cohabitation before the passage of the act approved March 22, 1882, entitled "An act to amend section 5352 of the Revised Statutes, in reference to bigamy and for other purposes," has become subject to certain penalties and political disabilities;

And whereas, having been assured that he has abandoned these unlawful practices and no longer countenances or gives any support

thereto, and that he has not been guilty thereof since the passage of the act aforesaid and is now a law-abiding citizen;

And whereas the commissioners appointed under authority of the said act and the Governor and justices of the supreme court of the Territory having recommended him as worthy of the amnesty contemplated in section 6 of the above-entitled act, for which he in good faith has applied and made oath as required in such cases:

Now, therefore, be it known that I, Chester A. Arthur, President of the United States of America, in consideration of the premises and divers other good and sufficient reasons me thereunto moving, do hereby grant to the said Andrew Larsen a full and unconditional pardon.

In testimony whereof, etc."

Nevertheless, counsel for the defendant challenged the juror on the ground that he had lived in the practice of polygamy and had committed that offense as defined in section one of an act of Congress approved March 22d, 1882; but the court denied the challenge and defendant excepted and now assigns the same as error.

Did the pardon render the juror competent? The fifth section of the act above mentioned provides "That in a prosecution for bigamy, polygamy, or unlawful cohabitation * * * it shall be a sufficient cause of challenge to any person drawn or summoned as a juryman or talesman, first, that he is or has been living in the practice of bigamy, polygamy, or unlawful cohabitation with more than one woman, or that he is or has been guilty of an offense punishable by the foregoing sections," etc.

Section six of the same act is as follows: "That the President is hereby authorized to grant amnesty to such classes of offenders guilty of bigamy, polygamy, or unlawful cohabitation before the passage of this act, on such conditions and under such limitations as he shall think proper; but no such amnesty shall have effect unless the conditions thereof shall be complied with."

The amnesty or pardon to the challenged juror was granted in pursuance of the above section, and it was without condition or limitation. It granted to Larsen "full and unconditional pardon." It has the effect of complete amnesty with respect to the future; he was restored to all the rights and privileges which lawfully he could have enjoyed if he had not committed the offense. With respect to the future he was, before the law, as if he had never practiced either of the crimes mentioned. The term amnesty in the section quoted was used in its broadest sense.

The next section legitimated the issue of bigamous and polygamous marriages born before the act took effect. The intention of the act was to induce those who had practiced polygamy to abandon it, and to submit to the law. In case they would do so, the President was authorized to extend to them amnesty. They were invited to obey the law, with the promise that their crimes would be effaced if they would do so. The word "amnesty" is defined thus: "An act of oblivion of past offenses granted by the Government to those who have been guilty of any neglect or crime, usually upon condi-

tion that they return to their duty within a certain period." Bouvier's Law Dict., 15th edition, vol. I., p. 156; also Ranedge's Law Dictionary, vol. I.

A pardon relieves an offender from the consequences of an offense of which he has been convicted, while amnesty obliterates an offense before conviction, and in such case he stands before the law precisely as though he had committed no offense; and while the term pardon was used by the President, it had the effect of amnesty. In the case of Knote *vs.* United States, 5 Otto, 149, the question was whether the general pardon and amnesty granted by President Johnson by proclamation on the 25th day of December, 1868, would entitle one receiving the benefit of such pardon and amnesty to the proceeds of his property, previously condemned and sold under the confiscation act of 1862, after such proceeds had been paid into the Treasury.

The court held that such person would not be entitled to such proceeds; that the pardon afforded no relief for the punishment already suffered by imprisonment, forced labor, or otherwise. The court said: "The offense being established by judicial proceedings, that which has been done or suffered while they were in force is presumed to have been rightfully done and justly suffered, and no satisfaction for it can be required; but when granted in contemplation of law it so far blots out the offense that afterwards it cannot be imputed to him to prevent the assertion of his legal rights. It gives to him a new credit and capacity and rehabilitates him to that extent in his former position."

On the authority of this case, as well as from the nature of the pardon granted, we hold that this error in the record was not well assigned.

The indictment charges that defendant was married to Kate Smith while he had a lawful wife living by the name of Sarah Ann Bassett. Upon the trial the latter woman appeared as a witness, stated that she was defendant's lawful wife, and expressed a willingness to testify that defendant told her that he was married to Kate at the time and place mentioned in the indictment, and to testify further as to his conduct towards her, and subsequently the defendant objected to the testimony of this witness on the ground that she was his lawful wife at the time of the confession. This objection the court overruled. Defendant excepted and has assigned the same as error.

At common law the general rule of evidence is that the husband and wife are not competent witnesses for or against each other. This rule was based on grounds of public policy. It was believed that such evidence would have a tendency to disturb the peace of families and to weaken that feeling of mutual confidence which should accompany married life. In his work on evidence Judge Taylor states the exceptions to the general rule thus: "On the rule which precludes husbands and wives from giving testimony for or against each other in criminal proceedings a necessary exception has been engrafted at common law, when a personal injury has been committed by the one against the other. Were it not for this ex-

ception the wife would be exposed without remedy to brutal treatment." The criminal procedure act of 1878, section 421, is as follows: "Except with the consent of both or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other in a criminal action or proceeding to which one or both are parties."

Such was the common law and such was the statute at the time the law now in question was enacted. The statute now in force is this: "All persons, without exception, otherwise than is specified in the next two sections, who, having organs of sense, can perceive, and perceiving can make known their perceptions to others, may be witnesses. * * * Section 1154, Civil Code, Laws of Utah, 1884. Section 1156 limits this language thus: "There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate. Therefore a person cannot be examined in the following cases:

"1. A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent; nor can either, during the marriage or after, without the consent of the other, be examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or a proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other." Section 1154 having made the husband and wife competent in all cases, section 1156 provides that neither, without the consent of the other, is admissible, except in two classes of cases: First, in a civil action or proceeding by one against the other, and, second, in a criminal action or proceeding for a crime committed by one against the other. In the latter act the word "crime" is used; in the earlier, the phrase "criminal violence upon one by the other." In the case of the earlier law violence is required, and in the later law it must be the case of a crime by the one against the other. In using terms so widely different in their import the Legislature must have intended to express different meanings. The language of a statute should be given its ordinary meaning unless other parts of the act or peculiar circumstances indicate belief that a different meaning was intended. The Legislature must be presumed to have known that crimes may be committed by the husband against the wife and by the wife against the husband without personal violence.

A man who, having a lawful wife living, marries another woman commits the crime of polygamy. Is, then, polygamy a crime against the lawful wife? It certainly is a breach of the implied, if not the express, terms of the marriage contract The husband is bound by that contract not to marry another woman while the marriage is in force; and because it is a breach of that contract most hurtful in its consequences it is declared to be a crime. Whenever the act or the conduct which constitutes a public offense or crime consists in a direct violation of the rights of an individual the crime is against that individual as well as against the public.

The law recognizes the marital rights of a woman or man as well

as their rights to life, liberty, and security from personal violence, and the breach thereof by a second marriage or by cohabitation with another woman as a wife is often more injurious to the feelings of the lawful wife, as well as in other respects, as would be a deprivation of personal security or of personal liberty—more injurious than the shake of a fist, coupled with a threat or an attempt to commit bodily injury. An attempt to poison the wife by the husband, without violence, is a crime against her, and renders her a competent witness, without consent, in a prosecution for the crime; and it is often quite as necessary for the lawful wife to testify, in order to protect her rights against plural marriage, in this Territory as it is to protect her from personal violence.

The ground upon which the exclusion of the wife or husband rests is that it would destroy confidence and produce discord. A man in the bed of a strange woman is in a very unfavorable situation to insist upon preserving inviolate the sacred concord of marriage and harmony and confidence on the part of his wife.

The case of State *vs.* Sloan (55 Iowa, 217) was an indictment for bigamy. In the opinion the court said: "Mrs. Sloan, the first wife, was allowed to testify in behalf of the State against the defendant's objection. Section 3641 of the code provides that neither the husband nor wife shall be a witness against the other except in a criminal proceeding, for a crime committed by one against the other. In our opinion, if the defendant is guilty of bigamy he committed a crime against his wife. We think she was a competent witness."

The State *vs.* Hughes (58 Iowa, 165) was also a prosecution on an indictment for bigamy. In that case the court said: "Phebe Hughes, the lawful wife, was introduced by the State as a witness, against the defendant's objection, to prove the marriage between her and the defendant. In this we think that there was no error. The point was expressly ruled in State *vs.* Sloan, 55 Iowa; 219." To the same effect is State *vs.* Bennets (31 Iowa, 24).

Under a statute of the State of Nebraska permitting a husband or wife to testify in a criminal proceeding for a crime committed by one against the other, the supreme court of that State held that on the trial of a husband on an indictment for adultery the wife was a competent witness against him (Lord *vs.* State, 23 Northwestern Reporter, 507). The provisions of the statutes under which these cases were decided are the same in substance as the one under consideration. The supreme courts of other States have held to the contrary under similar statutes. But we are clearly of the opinion that upon principle and upon authority the wife was a competent witness, and that there was no error in permitting her to testify.

126 Counsel for defendant also insist that the evidence was insufficient to justify the verdict. The marriage of defendant to Sarah Ann Bassett was admitted, and the contention was as to the marriage in August, 1884, to Kate Smith. The proof of this marriage consisted of confessions and circumstances tending to corroborate those confessions. In the case of Miles *vs.* The United States (103 U. S., 304) the court held that the first marriage might

be proven, in like manner as any other fact, by the admission of the defendant or by circumstantial evidence, and that it was not necessary to prove the first marriage by witnesses who were present at the ceremony. To the same effect is the United States *vs.* Simpson, decided by the supreme court of Utah (Pacific Reporter, vol. 7, No. 6). If a lawful marriage may be proven by such evidence, we see no reason why a polygamous marriage may not be proven by the same class of evidence. When confessions are voluntarily and deliberately made, correctly understood, and accurately reported, they are of the most reliable proof. "Indeed, all reflecting men are now generally agreed that deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in the law, their value depending on the sound presumption that a rational being will not make admissions prejudicial to his interest and safety unless when urged by the promptings of truth and conscience. Such confessions, therefore, so made by a prisoner to any person at any time and in any place are at common law receivable in evidence, while the degree of credit due to them must be estimated by the jury according to the particular circumstances of each case." (Taylor on Evidence, vol. 1, page 742, eighth edition.) We are of the opinion that the evidence was sufficient to support the verdict.

It is further insisted by defendant's counsel that the court below erred in using in the charge to the jury the following language: "You are not bound to believe the testimony of any witness or of any number of witnesses." This language, stated thus, is separated and disconnected from that which precedes and that which follows it. It is but one part of the sentence of a long charge. Standing alone, it does not describe the thought nor the idea of the court. It usually requires an entire sentence, often more, and sometimes a great number of sentences, to describe an idea and to extend or qualify it or to make it clear. That part of the charge which accompanies the statement objected to is so connected with the statement as to qualify its meaning. It is: "You are the sole judges of the witnesses and of the weight of the evidence, and in determining the credibility of the witnesses and the weight of the testimony you should take into consideration the appearance of the witnesses upon the stand, their apparent candor or the want of candor, their interest in the outcome of the case, their relation to the parties interested in any way, and all the facts and circumstances surrounding the witnesses. You are not bound to believe the testimony of any witness or of any number of witnesses. You are to search for the truth, believing only such testimony as carries conviction to your minds of its truth. The defendant is presumed to be innocent until he is shown to be guilty beyond a reasonable doubt."

Section thirty of the Code of Civil Procedure (Laws of Utah, 1884, p. 125) provides that the court in the charge "may state the testimony and declare the law, and in each case he shall inform the jury that they are the sole judges of the credibility of the witnesses, of the weight of the evidence, and of the facts." The part of the charge above quoted is but the statement of the substance of this

statute, and the deductions resulting from it—its corollary. There was a conflict in the testimony of the witnesses as to the material facts. In view of such evidence the charge was given. Immediately after using the language objected to, the court told the jury that in searching for truth they should rely only on such testimony as they should believe to be true. The court did not in effect tell them that they might disregard the statements of uncontradicted witnesses. The evidence did not present that question. The evidence as to the material facts was conflicting and contradictory. We find no error in the record sufficient to reverse the judgment of the court below, and in view of the conclusions above reached we do not deem it necessary to decide other points discussed. The judgment of the court below is affirmed.

Boreman, justice, concurs.
H. P. Henderson, justice, concurs.

Endorsed: Filed 26 Feb'y, 1887. E. T. Sprague, clerk.

127 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the Territory of Utah, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of plea which is in the said supreme court, before you, between William E. Bassett, plaintiff in error, and The United States of America, defendant in error, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 1st day of March, in the year of our Lord one thousand eight hundred and eighty-seven.

[Seal Supreme Court, Territory of Utah, United States of America.]

Attest: E. T. SPRAGUE,
Clerk of Supreme Court of Utah Territory.

Allowed by—
C. S. ZANE,
Chief Justice of the Supreme Court of Utah Territory.

[Endorsed:] The United States, def't in error, *vs.* William E. Bassett, pl'ff in error. Writ of error to U. S. Supreme Court.

128 Know all men by these presents that we, David Hilton and John Lees, are held and firmly bound unto the United States of America in the full and just sum of three hundred dollars, to be paid to the said United States of America, its certain attorney, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this first day of March, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately, at a term of the supreme court of Utah Territory, in a suit depending in said court between William E. Bassett, plaintiff in error, and The United States of America, defendant in error, judgment was rendered against the said plaintiff in error; and the said plaintiff in error having obtained from the Supreme Court of the United States a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing — to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said William E. Bassett shall prosecute the said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

W. E. BASSETT. [SEAL.]
DAVID HILTON. [SEAL.]
JOHN LEES. [SEAL.]

Sealed and delivered in the presence of—
(Sig.) J. H. HURD.

Approved by me—
(Sig.) C. S. ZANE, *Judge.*

[Endorsed:] United States, def't in error, *vs.* William E. Bassett, pl'ff in error. Bond upon suing out writ of error. Copy. Filed March 1, 1887. E. T. Sprague, clerk.

129 The United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Utah Territory, wherein William E. Bassett is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable chief justice of the supreme court of Utah

Territory this first day of March, in the year of our Lord one thousand eight hundred and eighty-seven.

[Seal Supreme Court, Territory of Utah, United States of America.]

C. S. ZANE,
Chief Justice.

TERRITORY OF UTAH, } ss:
Salt Lake County, }

On this first day of March, in the year of our Lord one thousand eight hundred and eighty-seven, personally appeared J. H. Hurd before me, the subscriber, the chief justice of Utah Territory, and makes oath that he delivered a true copy of the within citation to William H. Dickson, the United States district attorney for Utah Territory, the attorney of record for the defendant in error in the case mentioned in said citation.

C. S. ZANE,
Chief Justice.

[Endorsed:] The United States, def't in error, *vs.* William E. Bassett, pl'ff in error. Citation. Filed March 1, 1887. E. T. Sprague, clerk.

130 TERRITORY OF UTAH, } ss:
Salt Lake County, }

I, E. T. Sprague, clerk of the supreme court of said Territory of Utah, in obedience to the writ of error hereto attached, do return annexed hereto a transcript of the record and proceedings, opinion, bond on writ of error, together with said original writ and the citation thereon, all in the cause in said writ described, to the Supreme Court of the United States, and I hereby certify that said transcript of said record and proceedings, opinion, and bond is a true, correct, and complete copy of the several originals thereof on file or of record in my office.

Seal Supreme Court, Territory of Utah, United States of America.

Witness my hand and the seal of said supreme court of Utah Territory this 30th day of June, 1887, at Salt Lake City.

E. T. SPRAGUE,
Clerk of Supreme Court of Utah Territory.

Endorsed on cover: Utah Territory supreme court. No. 110. William E. Bassett, plaintiff in error, *vs.* The United States. Filed September 23, 1887.

Supreme Court U. S.
FILED,
NOV 17 1890
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 110.

WILLIAM E. BASSETT,
PLAINTIFF IN ERROR,
v.
THE UNITED STATES,
DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

FRANKLIN S. RICHARDS,
CHARLES C. RICHARDS,
For Plaintiff in Error.

SALT LAKE CITY:
JUVENILE INSTRUCTOR CO., PRINTERS AND BOOKBINDERS.
1890.

Supreme Court of the United States.

October Term, 1890.

No. 110.

WILLIAM E. BASSETT,
PLAINTIFF IN ERROR,
v.
THE UNITED STATES,
DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

On the 23rd day of November, 1886, the grand jury of the District Court for the First Judicial District of Utah Territory found an indictment for polygamy against the plaintiff in error, charging him with having married one Kate Smith, on the 14th day of August, 1884, when his lawful wife, Sarah Ann Williams, was still living and undivorced. (Record page 1.)

A motion was made to set aside and dismiss the indictment on the ground that it had not been found and pre-

sented in the manner prescribed by law, because it had been found without any other evidence than that of the legal wife. This motion was overruled. (Record pages 2 and 3.)

The accused plead not guilty and was tried by a jury, on the 6th day of January, 1887. He was convicted, and, on the same day, sentenced to be imprisoned in the penitentiary of Utah for five years and to pay a fine of five hundred dollars. (Record pages 4 and 5.)

An appeal was taken to the Supreme Court of Utah Territory where the judgment of the District Court was affirmed. (Record page 59.) The case is before this Court on writ of error issued on the 1st day of March, 1887. (Record page 65.)

ASSIGNMENT OF ERRORS.

First: The District Court erred in permitting Mrs. Sarah Bassett, the former legal wife of the plaintiff in error, against his objection, to testify to a confidential communication made to her by him, while they were husband and wife, and not in the presence of any other person.

Second: The Court erred in denying the challenge of plaintiff in error to the juror, Andrew Larsen, and in permitting him to sit as a juror in the case, against the objection of the plaintiff in error; the said Andrew Larsen being then and there disqualified to act as a juror in the case because he had been a polygamist.

Third: The Court erred in charging the jury that it was not bound to believe the testimony of any witness or any number of witnesses.

Fourth: The Court erred in overruling the motion of plaintiff in error to dismiss the case, after the prosecution

rested, because there was no testimony tending to establish his guilt, except the alleged confession testified to by his former wife, which was wholly uncorroborated.

JURISDICTION.

A writ of error from the Supreme Court of the United States to the Supreme Court of Utah Territory will lie in a criminal case where the accused has been sentenced to capital punishment or convicted of bigamy or polygamy.

18 Statutes at Large, 254;

Wiggins *v.* People, 93 U. S. 465.

THE WIFE NOT A COMPETENT WITNESS.

The plaintiff in error was convicted on the testimony of his former legal wife, Sarah Bassett, as to confidential communications made to her by him while she was his wife. Without this testimony he could not have been convicted. He objected to her being permitted to testify but the testimony was admitted against his objection. It is insisted that she was not competent to testify at all, and certainly not as to confidential communications made to her by her husband.

The policy of the law against permitting either the husband or wife to testify against the other, has been so well and universally recognized in this country and England that it is hardly necessary to cite authority on that point. Mr. Greenleaf, in his valuable work on evidence, sections 334 and 337, states the rule as follows:

Section 334. Husband and wife. The rule by which parties are excluded from being witnesses for themselves applies to the case of husband and wife; neither of them

being admissible as a witness in a cause, civil or criminal, in which the other is a party. This exclusion is founded partly on the identity of their legal rights and interests, and partly on principles of public policy, which lie at the basis of civil society. For it is essential to the happiness of social life that the confidence subsisting between husband and wife should be sacredly protected and cherished in its most unlimited extent; and to break down or impair the great principles which protect the sanctities of that relation would be to destroy the best solace of human existence.

Section 337. Neither is it material that this relation no longer exists. The great object of the rule is to secure domestic happiness by placing the protecting seal of the law upon all confidential communications between husband and wife; and whatever has come to the knowledge of either by means of the hallowed confidence which that relation inspires, cannot be afterwards divulged in testimony, even though the other party be no longer living. And even where a wife, who had been divorced by act of Parliment, and had married another person was offered as a witness by the plaintiff, to prove a contract against her former husband, Lord Alvanley held her clearly incompetent; adding, with his characteristic energy, "it never shall be endured that the confidence, which the law has created while the parties remained in the most intimate of all relations shall be broken whenever, by the misconduct of one party, the relation has been dissolved."

In the case of Stein *v.* Bowman, 13 Peters, 209, this court expounded the rule in the following clear and emphatic terms:

It is admitted in all the cases that the wife is not competent, except in cases of violence upon her person, directly to criminate her husband; or to disclose that which she has learned from him in their confidential intercourse.

Some color is found in some of the elementary works for the suggestion that this rule, being founded on the confidential relations of the parties, will protect either

from the necessity of a disclosure; but will not prohibit either from voluntarily making any disclosure of matters received in confidence; and the wife and the husband have been viewed, in this respect, as having a right to protection from a disclosure, on the same principle as an attorney is protected from a disclosure of the facts communicated to him by his client.

The rule which protects an attorney in such a case, is founded on public policy, and may be essential in the administration of justice. But this privilege is the privilege of the client, and not of the attorney. The rule which protects the domestic relations from exposure rests upon considerations connected with the peace of families. And it is conceived that this principle does not merely afford protection to the husband and wife which they are at liberty to invoke or not, at their discretion, when the question is propounded; but it renders them incompetent to disclose facts in evidence in violation of the rule. And it is well that the principle does not rest on the discretion of the parties. If it did, in most instances it would afford no substantial protection to persons uninstructed in their rights, and thrown off their guard and embarrassed by searching interrogatories.

In the present case the witness was called to discredit her husband; to prove, in fact, that he had committed perjury; and the establishment of the fact depended on his own confession. Confessions which, if ever made, were made under all the confidence that subsists between husband and wife. It is true the husband was dead, but this does not weaken the principle. Indeed, it would seem rather to increase than lessen the force of the rule.

Can the wife, under such circumstances, either voluntarily be permitted, or by force of authority be compelled to state facts in evidence which render infamous the character of her husband? We think, most clearly, that she cannot be. Public policy and established principles forbid it.

This rule is founded upon the deepest and soundest principles of our nature. Principles which have grown out of those domestic relations that constitute the basis of civil society, and which are essential to the enjoyment

of that confidence which should subsist between those who are connected by the nearest and dearest relations of life. To break down or impair the great principles which protect the sanctities of husband and wife, would be to destroy the best solace of human existence.

From the foregoing, and numerous other cases that might be cited, it is clear that the testimony of the former wife, Sarah Bassett, was wholly incompetent, and that its admission by the Court was error, unless the statute of Utah so modified the common law rule as to make the testimony competent.

THE STATUTE DOES NOT CHANGE THE RULE WHICH MAKES THE WIFE INCOMPETENT.

It was contended by the Government, in the Court below, and the same contention will doubtless be made here, that the statute changed the common law rule and made the wife a competent witness in polygamy cases. That contention is denied by the plaintiff in error, and it is insisted that the statute merely declares the common law.

The Sections of the Code of Civil Procedure which were relied upon are as follows:

Section 1154. All persons, without exception, otherwise than is specified in the next two sections, who, having organs of sense, can perceive, and perceiving, can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime, nor persons on account of their opinions on matters of religious belief; although in every case the credibility of the witness may be drawn in question, by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty, or integrity, or his motives, or by contradictory evidence; and the jury are the exclusive judges of his credibility.

Section 1156. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate, therefore a person cannot be examined as a witness in the following cases:

A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent; nor can either, during the marriage or afterwards; be without the consent of the other, examined as to any communication made by one to the other during the marriage; *but this exception does not apply* to a civil action or proceeding by one against the other, nor *to a criminal action or proceeding for a crime committed by one against the other.*

The common law rules relating to the competency of witnesses in criminal cases prevailed in Utah until the passage of the Code of Criminal Procedure, which contains the following provisions:

Section 420. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this act.

Section 421. *Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other, in a criminal action or proceeding to which one or both are parties.*

These provisions of the statute do not change the common law, nor are they in conflict with each other. They are in perfect harmony. One of them provides that the husband and wife are not competent witnesses against each other, except in a "criminal action or proceeding for a crime committed by one against the other." The other provides that, "except in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other, in a criminal action or proceeding to which one or both are parties." We contend that the exception of the Statute is

precisely the same as that known to the common law and that it only applies to cases of personal violence. We say:

First: That this prosecution against the defendant was not for a crime committed by him against his wife, within the sense and meaning of the Statute, and that she was incompetent to testify at all, without his consent.

Second: That if held generally competent to testify, because in a prosecution for a crime committed against her, it was error to permit her to testify to confidential communications made to her by her husband while she was his wife.

I.

The Statute does not enumerate the cases that are to be regarded as crimes committed by the husband against the wife, or by the wife against the husband. We must presume that it intended to limit the competency of the wife as a witness to cases of violence upon her person, because that was the former rule and the intention of the Legislature to change such a rule will not be presumed in the absence of language clearly expressing such intention.

Besides, that is the only reasonable construction that can be placed upon the language of the Statute. If polygamy is such a crime committed by the husband against the wife as makes her a competent witness against him, then all felonies are such crimes, for, under the laws of Utah, conviction of the husband for any felony is sufficient cause to entitle his wife to a divorce.

This construction would leave the statute so vague and indefinite as to be objectionable on the ground of uncertainty, while the other makes it definite and declaratory

of a well known rule that has been jealously guarded by the Courts for generations past.

The provisions of the civil and criminal codes, being *in pari materia*, must be construed together. Although they were enacted at different times, they were intended to be, and are, harmonious. The rule of construction in such cases is stated by Chancellor Kent as follows:

Several acts *in pari materia*, and relating to the same subject are to be taken together, and compared, in the construction of them, because they are considered as having one object in view, and as acting upon one system. This rule was declared in the case of Rex *vs.* Loxdale, and the Earl of Ailsbury *vs.* Pattison, and the rule applies, though some of the statutes may have expired, or are not referred to in other acts. The object of the rule is to ascertain and to carry into effect the intention; and it is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy, and was intended to be consistent and harmonious in its several parts and provisions.

Of this rule Lord Mansfield said:

All acts *in pari materia* are to be taken together, as if they were one law. * * Where there are different statutes *in pari materia*, though made at different times, or even expired, and not referring to each other, they shall be taken and construed together as one system, and as explanatory of each other.

In interpreting these statutes the court will hesitate to place upon them such a construction as would abrogate a well settled rule of law, which, in the language of Lord Mansfield, was "founded in decency, morality and public policy." It will construe the statutes strictly and not enlarge the effect of legislation which has been declared, by eminent law writers, to act as a stimulus to perjury and to produce disturbance of the mairtal relation and the demoralization of society.

We are not without judicial interpretation of Statutes similar to those under consideration. In the case of People *v.* Langtree, 64 Cal., 259, where the wife of a person who was under a separate indictment for the same offense as the accused, had been offered as a witness but prohibited by the Court from testifying to any matters implicating her husband, in speaking of these sections of the California Codes, which are identical with ours, the Supreme Court of that State says:

We think upon a fair construction both mean the same thing, although the penal Code is more explicit than the other. On this as on nearly every other subject to which the codes relate, they are simply declaratory of what the law would be if there were no codes.

This decision is directly in point, not only because the provisions of law under consideration were the same as ours, but for the further reason that they were enacted at different times: the Criminal Code having been adopted first and the Code of Civil Procedure afterwards, as in our case. The Supreme Court of California has recently affirmed this construction in the case of People *v.* Mullings, 83 Cal. 140, where it says:

The provisions of our Codes on the subject of privileged communications between husband and wife are little more than a declaration of the common law rule upon the subject, except in this respect: the privilege at common law did not extend to communications which were not in their nature confidential; and although such communications were generally held to be confidential, yet some very difficult questions did occasionally arise as to the character of the communications; but our Code sweeps away that embarrassing distinction by extending the privilege to "any communication made by one to the other during the marriage."

In the case of the State *v.* Armstrong, 4 Minn. ~~268~~ 342, under a statute similar to ours, in a prosecution for adul-

tery, the court held that the wife was not a competent witness, and explained the rule as follows:

The statutes only allow the wife to testify against the husband, or the husband against the wife, without the consent of the one against whom the testimony is offered, in "a criminal action or proceeding for a crime committed by one against the other." This exception is inserted simply to save those cases where, at common law, a wife could be a witness against her husband, or a husband against his wife, and not to introduce any new rule, or extend the old one. Mr. Greenleaf, in his work on evidence, vol. 1, 343, says that these exceptions are allowed "partly for the protection of the wife in her life and liberty, and partly for the sake of public justice. But the necessity which calls for this exception for the wife's security, is described to mean, not a general necessity, as where no other witness can be had, but a particular necessity, as where, for instance, the wife would be exposed, without remedy, to personal injury." He instances the decided cases of the forcible abduction and marriage of the woman. The case of a rape upon her person, an assault and battery upon her, or for maliciously shooting her. In the People *v.* Chegaray, 18 Wend. 642, Justice Bronson doubts "whether the testimony of the wife should in any case be received against the husband, except where she complains of personal violence or ill treatment of herself." "She is competent in a prosecution against her husband for a personal outrage against herself." 3 Phil. Ev. (Cow. & Hill's Notes), 76.

A prosecution for the crime of adultery does not fall within the cases in which a wife could testify against her husband under the general rule, for two reasons: first, the necessity which warrants the exception does not exist, as all the material features of such an offense are susceptible of proof without her aid as readily as in other crimes. Second, it is not a crime against her person, and involves no violence to or abuse of her. 13 Tex. App. 274,

In the case of Compton *v.* State, which was a prosecution for incest, the Texas Court of Appeals, under a simi-

lar Statute, held that the wife was not a competent witness against her husband, and declared that this doctrine was in harmony with "the great weight of authority, English and American," as well as being in consonance "with the reason and policy of the law." The Court cites with approval the following from Russell on Crimes:

The wife is also admitted as a witness against her husband *ex necessitate* in a prosecution of him for offenses against her person. * * * But this rule seems to be confined to cases where the charge affects the liberty or the person of the wife.

In the case of People *v.* Houghton, 24 Hun. 501, on the trial of the accused for bigamy, the public prosecutor offered his wife as a witness, and the objection was made to her that she was incompetent, although willing to testify. The objection was overruled, the defendant's counsel excepted, the wife was sworn and examined as a witness, gave testimony against her husband, and he was convicted. The Appellate Court held that the wife was incompetent, and said:

By the rules of evidence prevalent at common law, neither husband nor wife is permitted to testify for or against each other in any action, civil or criminal. The rule has its foundation in the identity of their rights and concerns, the interest of civil society, and the sanctities of the marriage relation, and it is enforced by the Courts with much strictness. Some exceptions there are where the wife would otherwise be exposed to personal injury without remedy. The rigor of this severe rule has been much softened in this State in its application to civil actions, but nothing was accomplished in the direction of criminal prosecutions until 1876, when the legislature made the following provisions: "In all criminal trials and examinations before trial, a husband or wife may be examined as a witness in behalf of the other, but upon no such trial or examination shall a husband or wife be compelled to testify against the other." (Chapter 182 of

Laws of 1876, 2.) It required legislative action to abrogate or change the old rule prevailing here, and we must find how far this Statute is operative in that direction. It is a Statute in derogation of the common law, and can be permitted to accomplish nothing beyond what is fairly intended. It is first affirmatively enacted that a husband or wife may be examined as a witness for the other in a criminal prosecution, and further the Statute does not provide affirmatively. What follows is a provision that on no criminal trial or examination shall husband or wife be compelled to testify against the other. These are negative words only, and make no innovation or relaxation of the old rule of law. Probably their true intention and operation will be found in preventing the elicitation of testimony from husband or wife against each other after being called in their behalf. Substantially the same view of this Statute was taken in the Brigg's case (60 How., 17). If it had been the intention of the Statute makers to break down the barrier protecting the husband and wife from the testimony of the other in criminal prosecutions, it would not have been left to inference or implication, and we are not at liberty to resort to either to find it.

In the case last cited the statute was more favorable to the government's contention than the one under consideration, for it expressly permitted the wife's testimony for the accused and only prohibited compulsory testimony from her against him. It did not say she should not testify against her husband if she chose to do so, but the Court said she must not be permitted to so testify in the absence of a Statute giving her that right affirmatively.

The foregoing and many other authorities clearly establish the doctrine contended for by the plaintiff in error as to the incompetency of the wife on the ground that this case was not, within the meaning of the Statute, a proceeding for a crime committed by the husband against the wife, nor a case of criminal violence upon her. The following authorities are also in point:

Wharton's Criminal Evidence, 390, 393, 397.
Thomas *v.* State, 14 Texas appeals, 70.
Overton *v.* The State, 43 Texas, 616.

There can be no possible doubt as to the correctness of our interpretation of the Statute unless it be held that the provision of the Code of Civil Procedure, enacted in 1884, which declares that a husband or wife cannot be examined against the other, without his or her consent, except in "a criminal action or proceeding for a crime committed by one against the other," repealed the provision of the Penal Code enacted in 1878, which declares that "except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other, in a criminal action or proceeding to which one or both are parties."

The act of 1884 does not repeal the act of 1878, unless the former is "in contravention" of the latter. There is no repeal in terms and there can be none by implication, because there is no repugnance or inconsistency between the two statutes. They are entirely harmonious and must stand together as declaring the common law. There is nothing in the Code of Civil Procedure which indicates an intention to repeal the provision of the Penal Code. The object of the former was to revise and compile the existing laws, rather than to change or alter them. A change of phraseology in such a case does not import a change of meaning, unless such clearly appears to have been the intention of the Legislature. The Statute should be read in the light of the common law and the public policy which has ever prevailed in relation to this subject, and the terms of the Statute should be construed in accordance with their ancient acceptation and judicial

interpretation. The implication of repeal must be necessary and irresistible.

Potter's Dwarris on Statutes, 154. Note.

Sedgwick on Construction of Statutory Laws, 2nd Ed. 97, 105, 106.

Bishop on Written Laws, Sections 64, 98, 112 a, 131, 156.

United States *v.* Bowen, 100 U. S. 513.

Butts *v.* Voorhes, 13, New Jersey Law, 19.

II.

Should it be held, however, that the provision of the Code of Civil Procedure supercedes that of the Penal Code, and that this prosecution was for a crime against the wife, within the meaning of the Statute, and that she was a competent witness, still it was error to permit her to disclose a confidential communication. At common law such communications were inviolate, even where the witness was competent, as in case of the husband's death or the dissolution of the marriage.

Mr. Wharton in his Criminal Evidence, Sections 398 and 401, says:

Section 398. Confidential communications between husband and wife are so far privileged that the law refuses to permit either to be interrogated as to what occurred in their confidential intercourse during their marital relations, covering, therefore, admissions by silence as well as admission by words.

Section 401. Whether special Statutes prescribing that the martial relation shall not be a ground for the exclusion of witnesses apply to criminal prosecutions depends upon the terms of such Statutes. But such Statutes, when limited to the restoration of competency, do not preclude the parties from taking advantage of the right of withholding privileged communications which

occurred during coverture and not in the presence of third parties.

Mr. Greenleaf in his work on evidence, Section 254, says:

Communications between husband and wife belong also to the class of privileged communications, and are therefore protected independently of the ground of interest and identity, which preclude the parties from testifying for or against each other. The happiness of the married state requires that there should be the most unlimited confidence between husband and wife; and this confidence the law secures by providing that it shall be kept forever inviolable; that nothing shall be extracted from the bosom of the wife which was confided there by the husband. Therefore, after the parties are separated, whether it be by divorce or by death of the husband, the wife is still precluded from disclosing any conversations with him, though she may be admitted to testify to facts which came to her knowledge by means equally accesible to any person not standing in that relation.

In the case of Stein *v.* Bowman, *supra*, this Court used the following emphatic language:

Can the wife, under such circumstances, either voluntarily be permitted, or by force of authority be compelled to state facts in evidence which render infamous the character of her husband? We think, most clearly, that she cannot be. Public policy and established principle forbid it. This rule is founded upon the deepest and soundest principles of nature. Principles which have grown out of those domestic relations, that constitute the basis of civil society, and which are essential to the enjoyment of that confidence which should subsist between those who are connected by the nearest and dearest relations of life. To break down or impair the great principles which protect the sanctities of husband and wife, would be to destroy the best solace of human existence.

We have endeavored to show that the Utah Statute

does not change the common law rule, as to the competency of the wife's testimony, and, while we think we have succeeded, still, if mistaken on this point, and if the testimony of Mrs. Sarah Bassett would have been admissible under a prosecution for the violation of a territorial law, we contend that the Utah Statute did not apply to this case, which was a prosecution by the Government, under the laws of the United States, and, in the absence of an act of Congress on the subject, would be governed by the rules of evidence prevailing at common law.

United States *v.* Reid, *et al.*, 12 How. 361.

Tennessee *v.* Davis, 100 U. S. 257.

Conn. Mut. Life Ins. Co. v. Schaefer, 94 U.

The gravity of the charge against the plaintiff in error and the extreme penalty imposed upon him, the utter absence of all testimony tending to establish guilt, except the alleged confession testified to by his wife, and the strained construction of the Statute which is claimed by the prosecution to abrogate a long established and well settled rule of law, all unite in appealing to the sound judgment of the Court for a strict adherance to its former decisions, which have ever preserved inviolate the sublime rule for which we now contend.

We submit that the Court erred in overruling the objections to this witness and permitting her to testify against the accused.

CHALLENGE TO THE JUROR LARSEN.

On the trial, Andrew Larsen was objected to by the accused on the ground that he had been a polygamist. The objection was overruled and the juror was sworn in the case. (Record pp 8, 9 and 10.) Section 5 of the act of Congress of March 22, 1882, commonly called the Edmunds Act, provides:

That in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, *it shall be sufficient cause of challenge to any person drawn or summoned as a juryman or talesman, first that he is or has been living in the practice of bigamy, polygamy or unlawful cohabitation, with more than one woman*, or that he is or has been guilty of an offense punishable by either of the foregoing sections, or by Section 5352, of the Revised Statutes of the United States, or the Act of July 1st, 1862, entitled, "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah;" or, second, that he believes it right for a man to have more than one living and undivorced wife at the same time, or to live in the practice of cohabiting with more than one woman; and any person appearing or offered as a juror or talesman, and challenged on either of the foregoing grounds may be questioned on his oath as to the existence of any such cause of challenge, and other evidence may be introduced bearing upon the question raised by such challenge; and this question shall be tried by the Court. But as to the first ground of challenge, before mentioned, the person challenged shall not be bound to answer if he shall say upon his oath that he declines on the ground that his answer may tend to criminate himself; and if he shall answer as to said first ground, his answer shall not be given in evidence in any criminal prosecution against him for any offense named in sections one or three of this act; but if he declines to answer on any ground, he shall be rejected as incompetent.

The language of the foregoing section is so clear that it would almost seem a reflection upon the intelligence of the Court to offer any argument on this point, were it not for the contention heretofore made that the challenge claimed by the plaintiff in error was provided by law for the sole benefit of the Government and was not available to the accused.

It is fair to presume that the intention and object of Congress in providing this cause of challenge was to secure fair and impartial jurors in this class of cases. The prosecution was not to be hampered by any person on the jury who, by reason of having once been a polygamist, might still retain a friendly bias for those in that relation, nor was the accused to be subjected to the disadvantage of being tried by a juror who had once been a polygamist but who, having renounced the doctrine, should feel a special interest in prosecuting those who were not, in his estimation, so progressive as himself.

The reason why such a challenge should be allowed to the accused is certainly as strong as that why it should be given to the Government, for it is a well-known fact that apostates from any particular faith or practice are the most bitter and unrelenting persecutors of those who still retain the faith or adhere to the practice. It was to prevent the miscarriage of justice on the one hand, and to restrain the zeal of unscrupulous converts on the other, that this cause of challenge was provided and an effort made to secure impartial and wholly disinterested persons for jurors in these cases. The pious apostate whose soul is continually crying to his brother, "I am holier than thou," is no more fit to sit in judgment on that brother than would be his most deadly foe, and Congress knew it.

If our conclusion is correct as to the object and reason of the law, it matters not that the juror Larson had a pardon from the President, for that fact would not tend to alter his conviction or remove from his mind any bias it might retain by reason of his former belief and practice. The juror was clearly disqualified under the law and the denial of the challenge was error.

ERRONEOUS INSTRUCTIONS.

The Court charged the Jury that they were "not bound to believe the testimony of any witness or any number of witnesses." This was error. The jury are bound to render a verdict according to the law and the evidence, and for judicial purposes, they are bound to believe the direct and positive testimony of unimpeached and uncontradicted witnesses when the facts testified to are not incredible on their face.

In the case of Lomer *v.* Meeker, 25 New York, 363, the Court of appeals said:

The Judge, in this case, should have nonsuited the plaintiff, or dismissed the complaint, which is equivalent to a nonsuit. The argument is, that this could not properly be done, because there was a question of credibility raised in respect to the witness Bock, who proved the usury. But this objection is untenable. The witness was not impeached or contradicted. His testimony is positive and direct, and not incredible upon its face. It was the duty of the Court and Jury to give credit to his, testimony. The positive testimony of an unimpeached uncontradicted witness cannot be disregarded by Court or Jury arbitrarily or capriciously. They are bound to believe, for judicial purposes, such testimony, and it would, in an instance like this, be the clear duty of the Court to set aside the verdict of a jury founded upon a disbelief of clear, uncontradicted and undisputed evidence.

In the case of Robertson *v.* Dodge, 28 Ill. 163, the Supreme Court of Illinois said:

Can a jury, from mere caprice, entirely disregard the testimony of a witness unimpeached in any way? This they cannot lawfully do, although they are the Judges of the credibility of witnesses. They must judge of that fact, as of any other in the case, from evidence. They cannot disregard the testimony of a witness without

some cause. They must have some grounds for disbelieving him before they are authorized to do so. They must exercise their judgement and not their will, when passing upon the credibility of a witness.

The witnesses for the defense were not contradicted and none of them were impeached, but, under the erroneous instructions of the court, their testimony was arbitrarily disregarded by the jury. Without any cause or ground for so doing, the jury wholly discarded the positive testimony of the alleged plural wife and that of all the other witnesses for the defense. They convicted the accused on an alleged confession, which was testified to be by the former wife, when neither the confession nor the wife's testimony were corroborated in any way. The instruction of the court which invited such a verdict was grave and manifest error.

UNCORROBORATED CONFESSION.

The Court erred in everruling the motion of the accused to have the case dismissed at the close of the testimony for the prosecution. There was no evidence in the case tending to establish his guilt, except the alleged confession testified to by the former wife, and neither the confession nor her testimony were corroborated in any particular.

Mr. Greenleaf, in his work on Evidence, Vol. 1. Section 217, says:

In the United States, the prisoner's confession, when the *corpus delecti* is not otherwise proved, has been held insufficient for his conviction; and this opinion certainly best accords with the humanity of the Criminal Code, and with the great degree of caution applied in receiving and weighing the evidence of confessions in other cases, and it seems countenanced by approved writers on this branch of the law.

Mr. Wharton, in his work on Criminal Evidence, Section 632 says:

While voluntary confessions of specific charges or of inculpatory facts are always admissible, under the conditions above stated, they cannot sustain a conviction, unless there be corroborative proof of the *corpus delicti*.

See the host of authorities cited in the note to this section.

In the case of Matthews *v.* State, 55 Alabama, 187, the court reviews the authorities on this question and, in an exhaustive and learned opinion, declares that the authorities generally concur in affirming that extra-judicial confessions of the prisoner, not corroborated by independent proof of the *corpus delicti*, will not justify a conviction. To the same effect are the following:

Bergen *v.* People 17 Ill. 436.
4 Minn. 377; 7 John, 314; 15 Wend. 147.

With confident assurance that the grave questions involved in this case will receive the careful consideration to which they are entitled, we respectfully submit that the Court below erred in each and every point covered by the Assignment of errors and that its judgment should be reversed.

FRANKLIN S. RICHARDS,
CHARLES C. RICHARDS,
For Plaintiff in Error.

BILL OF EXCEPTIONS.

It is claimed by the plaintiff in error that the bill of exceptions is properly in the record, and that it is authenticated by the certificate of the clerk of the supreme court of Utah, found on page 67 of the transcript of record. That there was a bill of exceptions properly settled, signed by the judge, and filed in the case, is apparent, not only from the bill itself, which appears on pages 8 to 58 of the record, but also from the note and certificate of the clerk of the district court, found on pages 5 and 7 of the record, and quoted in the Attorney-General's brief. That this bill of exceptions was before the supreme court is evident from the opinion of the court, which expressly mentions the exceptions taken, and considers the points raised by the bill. The original bill could be, and doubtless was, used in that court instead of a copy, and there was no necessity for sending to this Court the stipulation by which the original took the place of the copy in the court below. The last clause of the bill states that it is made part of the record, and the certificate of the clerk of the supreme court that the transcript now before this Court is a true and correct copy of the record in the case, fully meets the requirements of the law and includes the bill of exceptions.

But if there is any irregularity in the matter, the question cannot be raised for the first time in this Court. It should have been brought to the attention of the supreme court of Utah, where the defect might have been cured and the mistake corrected.

"An objection to matters which were not brought to the attention of the court below will not be considered here."

Clark *v.* Fredericks, 105 *U. S.* 5.
Wilson *v.* McNamee, 102 *U. S.* 572.

O'Reilly *v.* Campbell, 116 *U. S.* 418.
Richmond Min. Co. *v.* Rose, 114 *U. S.* 583.
Edward *v.* Elliott, 21 *Wall.* 532.
2 *Wall.* 252; 1 *Peters*, 299; 15 *How.* 546; 92 *U. S.* 171 *and* 116; 99 *U. S.* 567; 115 *U. S.* 17; 113 *U. S.* 594; 104 *U. S.* 786; 109 *U. S.* 185; 105 *U. S.* 640–644; 9 *Wall.* 363; 7 *Wall.* 499; 14 *Wall.* 613; 22 *Wall.* 198; 7 *Wall.* 565; 104 *U. S.* 54, 77; 97 *U. S.* 389; 14 *Wall.* 258, 265; 116 *U. S.* 436, 442; 103 *U. S.* 516; 11 *Peters*, 80; 103 *U. S.* 90; 1 *Black*, 506; 101 *U. S.* 633; 6 *Wall.* 225 *and* 561; 18 *How.* 295, 289, 507 *and* 530; 5 *How.* 83.

If, however, the objection is well taken and can be now considered, then the plaintiff in error should be granted leave to amend the record by filing a certified copy of the bill of exceptions or a copy of the stipulation making the original a part of the record in the Supreme Court; and this we ask leave to do, if the Court should so hold.

Office Supreme Court U. S.
FILED,
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JAMES H. McKENNEY
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

WILLIAM E. BASSETT, PLAINTIFF in error,
vs.
THE UNITED STATES.
No. 110.

ERROR TO THE SUPREME COURT OF UTAH.

BRIEF FOR DEFENDANT IN ERROR.

W. H. H. MILLER,
Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

WILLIAM E. BASSETT, PLAINTIFF in error,
vs.
THE UNITED STATES.
No. 110.

BRIEF FOR DEFENDANT IN ERROR.

I.

All of the questions made by the plaintiff in error arise upon the bill of exceptions. If, therefore, the bill of exceptions is not properly in the record the judgment must be affirmed. The statutes of Utah in force at the time these proceedings were had, being the laws, etc., of Utah of 1878, contained the following provisions:

> SEC. 310. A bill containing the exceptions must be settled and signed by the judge and filed with the clerk within ten days after the trial of the cause, unless further time is granted.
>
> SEC. 363. An appeal is taken by filing with the clerk of the court in which the judgment or order appealed from is entered or filed a notice stating the appeal from the same, and serving a copy thereof upon the attorney of the adverse party.

> SEC. 369. Upon an appeal being taken, the clerk with whom the notice of appeal is filed must within ten days thereafter, without charge, transmit to the clerk of the appellate court a copy of the notice of appeal, and of the record, and of all bills of exception, instructions and indorsements thereon; and upon the receipt thereof the clerk of the appellate court must file the same and perform the same service as in civil cases without charge.

Such being the law, has the bill of exceptions been properly brought into this record?

On page 5 of the transcript, after the sentence of the prisoner, is the following statement by the clerk:

> In regard to bill of exceptions, transcript of which should here appear, see certificate at end of this transcript on appeal.
>
> (Signed) T. A. PERKINS, *Clerk.*

On page 7 is the certificate, made by the clerk of the district court of Weber County, to the transcript to be filed in the supreme court of the Territory for hearing on appeal. That certificate recites "that the foregoing are full, true, and correct copies of the following papers, namely, indictment, etc.," but not including the bill of exceptions. Then follows this statement by the clerk, being the same statement referred to on page 5:

> I further certify that a copy of defendant's bill of exceptions in said cause is not made part hereof because said bill of exceptions is in possession of defendant's counsel at the city of Salt Lake, and because I am informed by said counsel that it has been stipulated by and between themselves and the United

States district attorney for Utah Territory that the original thereof, in place of such copy, should be used in the supreme court upon this appeal.

In other words, the transcript on appeal from the district court to the supreme court did not include the bill of exceptions at all. If the bill of exceptions was before the supreme court it was not there as a part of the record; nor does the clerk of the district court anywhere certify the bill of exceptions, nor is there any stipulation in the record which can take the place of such certificate.

There is, it is true, commencing on page 8 and ending on page 58, something in the form of a copy of a bill of exceptions; but whether it is a true or correct copy there is no certificate anywhere to show. The correctness of such copy could only be certified by the clerk of the district court, Mr. Perkins. The clerk of the supreme court, Mr. Sprague, could only certify the record as it came to him.

In short, this so-called bill of exceptions is in this transcript without any authentication whatever. It may be correct and it may not. In order to entitle it to any consideration, it should have been vouched for as the genuine instrument it purports to be by the clerk of the district court, or at least, if it was to be brought into the record by stipulation, that stipulation should be made a part of the record. Under the circumstances, therefore, it would seem that the alleged bill of exceptions must be rejected, and the judgment affirmed.

II.

If, however, the bill of exceptions is to be regarded as in the record, it is necessary to consider the questions made in the brief for plaintiff in error. The last of these questions I prefer to consider first.

It is insisted that there is no evidence in this case of the second marriage, except the confession of the defendant, and that such confession uncorroborated is insufficient. In the first place, this statement made by Bassett to his wife was not "a confession" within the meaning of the law. He stated that he had married a second wife, but he did not state or admit that he had committed a crime. This question seems to be covered by the decision in *The State* vs. *Crowder*, 41 Kans., p. 110–111. But secondly, as a matter of fact, this confession has corroboration in the evidence. First of all, it is not only in proof, but matter of general public information, that polygamy was at this time one of the tenets of the Mormon church, and it is in proof that the defendant was a member of that church, and a believer in this tenet. This appears, not only from the testimony of the first, but from the testimony of the second wife.

The conduct of the defendant, as detailed by the first wife on page 13, at and just before the time when he communicated to her that he had entered into the second marriage, is of much significance; that he, crying, should be holding his baby child upon his knee, and should tell his wife that it was the last time that he would hold the baby, is certainly a circumstance worthy of consideration. Again, his conduct with reference to the divorce case, as detailed on pages 15 and 16, is of significance in this connection.

So also is the evidence of the second wife, as detailed on pages 28, 29, 30, 31, and 32. It is true that she denies the marriage, but it is equally true that she does not testify candidly or frankly with reference to the subject-matter. What she says with reference to her receiving the addresses of Mr. Bassett, prior to his obtaining a divorce, the fact that he was a believer in polygamy, and that she was also, are all circumstances which tend to corroborate the evidence of the first wife. If the fact that these persons were believers in polygamy, and that he was "courting" her before the divorce, she encouraging such attentions, makes it easier to believe that they were married before such divorce, then this is corroborative evidence. The evident untruthfulness also of the statements of the second wife, with reference to the alleged sickness of Mr. Robbins, for the purpose of showing that she was kept in the store continuously about the time when it was claimed this second marriage occurred, are also corroborative of this fact.

If it be said that the evidence of the second wife was not before the court when the motion was made at the close of the evidence for the Government for a direction to the jury to acquit, the answer is easy. If the prisoner had chosen to rest his case on the evidence as it stood when he made his motion, he could have done so. Having put in additional evidence, if such evidence hurt his case he must abide the result. It was never held or claimed, that, after the overruling of a demurrer to evidence, the demurring party could put in new evidence without waiving his demurrer.

But it is not believed that it is the rule that a prisoner

will not be convicted upon a confession without corroborative evidence. In *Hopt* vs. *The People* (104 U. S., 631) this court gives its sanction to the statement that—

> A confession, if freely and voluntarily made, is evidence of the most satisfactory character. Such a confession, said Eyre, C. B. (1 Leach, 263), "is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt, and, therefore, it is admitted as proof of the crime to which it refers."

And again, it is stated that—

> Elementary writers of authority concur in saying that while from the very nature of such evidence it must be subjected to careful scrutiny and received with great caution, a deliberate, voluntary confession of guilt is among the most effectual proofs in the law, and constitutes the strongest evidence against the party making it that can be given of the facts stated in such confession.

The decision in *Bergen* vs. *People* (17 Ill., 436), cited and relied on by plaintiff in error, states that the corroborative circumstances need not go to the proof of the *corpus delicti*, but may be sufficient if they are corroborative of any part of the testimony. It is also stated in the same case that the text-books generally say that a confession alone is sufficient.

III.

Another assignment of error is that the court gave a wrong instruction to the jury. The instruction was in these words:

> You are the sole judges of the witnesses and of the weight of the evidence, and in determining the credi-

> bility of the witnesses and the weight of the testimony you should take into consideration the appearance of the witnesses upon the stand, their apparent candor or the want of candor, their interest in the outcome of the case, their relation to the parties interested in any way, and all the facts and circumstances surrounding the witnesses. You are not bound to believe the testimony of any witness, or of any number of witnesses. You are to search for the truth, believing only such testimony as carries conviction to your minds of its truth. The defendant is presumed to be innocent until he is shown to be guilty beyond a reasonable doubt.

The part excepted to is the sentence taken from the middle of the instruction, as follows:

> You are not bound to believe the testimony of any witness, or of any number of witnesses.

Taken alone, it may be questionable whether such a statement ought to be made to a jury; but in connection with what preceded and followed in this instruction, it was certainly unobjectionable. As is shown by Chief Justice Zane in his opinion (Transcript, pages 64 and 65), it was the duty of the court to inform the jurors that they were the sole judges of the credibility of the witnesses, of the weight of the evidence and of the facts. If they were the sole judges of the weight of the evidence, it must be that they were at liberty to believe or disbelieve the statements of any witness. In other words, they either were or were not "bound to believe the testimony of any witness or any number of witnesses." If they were so bound, then they were under constraint and were not at liberty to exercise the discretion which the law vested in them to decide as to the credibility of the witnesses in

view of all the facts and surroundings. If they were at liberty to accept or reject the testimony of any witness, according as such testimony was credible or incredible, then this instruction was not erroneous.

Indeed, counsel for the plaintiff in error seems to recognize the weakness of his assault upon this instruction in the fact that he prints in his brief only the single sentence, instead of presenting the entire charge which shows its fairness. Certainly there is nothing in this instruction to call for a reversal of the judgment of the court below.

The remarks of Chief Justice Zane, in his opinion, on this point, are a quite sufficient answer to the brief for plaintiff in error. The truth is that there was much in the circumstances of the case and in the testimony of the principal witness for defendant to discredit that witness.

IV.

The objection made to the competency of the juror, Larsen, is entirely without foundation. The juror had been pardoned by President Arthur, the pardon being produced in court. It is too late to argue that, holding such pardon, Mr. Larsen was subject to any of the disabilities imposed upon him by the law he had violated.

> *Ex parte Garland* (4 Wall., 380); *United States* vs. *Padelford* (9 Wall., 531); *United States* vs. *Klein* (13 Wall., 128); *Armstrong* vs. *United States* (13 Wall., 154); *Pargroud* vs. *United States* (13 Wall., 156); *United States* vs. *Kirby* (7 Wall., 483).

Having received the pardon, in the language of this court in *ex parte* Garland, Mr. Larsen became a new man with precisely the same rights and qualifications for the future duties and responsibilities of life as if he had never offended against the law.

V.

The first question argued in brief for plaintiff in error, and the last one to be discussed here, is whether the plaintiff's first wife was a competent witness to the matters of which she testified. It is beyond question that, unless the common law rule is changed by the statute of Utah, this testimony was incompetent. The material matter to which she testified was a conversation between her husband and herself while the relation of husband and wife existed, in in the absence of any third person except a little child, in which the husband admitted that he had married the second time; in other words, had committed the crime against which this prosecution is directed. It was claimed on behalf of the Government that section 1156 of the code of civil procedure of Utah embodies the law determinative of this question. That section is as follows:

> A husband can not be examined for or against his wife without her consent, nor a wife for or against her husband without his consent; nor can either, during the marriage or after, without the consent of the other, be examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or a proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

And it was insisted that under the last clause of that section the wife was a competent witness. It was also insisted, as it is insisted in the opinion of Chief-Justice Zane, that the crime under prosecution was a crime not merely against the people of Utah, but in the sense of the

statute was a crime committed against the wife; and that, therefore, for her own protection she must be permitted to testify. The decisions cited, in the opinion of the Chief Justice, from the supreme court of Iowa and the supreme court of Nebraska, directly support this position:

> *State* vs. *Sloane* (55 Iowa, 217); *State* vs. *Hughes* (58 Iowa, 165); *State* vs. *Bennets* (31 Iowa, 24); *Lord* vs. *State* (17 Nebr., 526).

And there seems to be much force and sound reason in this doctrine. Certainly no man can commit a greater wrong upon his wife than in acts of this character. Such an act is a much greater outrage upon any right thinking woman than a blow, or almost any sort of abuse.

On the other hand, plaintiff in error insists that in arriving at the law of Utah upon this question, section 1156 of the civil code (supra) must not be considered alone, but in connection with section 421, criminal code, which is in the following language:

> Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other in a criminal action or proceeding to which one or both are parties.

Section 1156 is the later enactment. It seems to cover the whole subject matter. True, it is found in the civil code, but it is in express terms made applicable to criminal actions and covers the whole subject-matter. The change from the language of section 421, substituting "criminal action" for "criminal violence" seems to have been with the purpose and to sanction the view, entertained by the supreme court of Utah, that the law was intended to cover

cases in which the crime was committed against the wife, not involving the elements of violence. To hold otherwise, it is necessary to make so much of section 1156 as applies to criminal cases meaningless and without effect as against the provisions of section 421. We are not at liberty to give it such a construction. Being the later act, and the subject-matter being within the competency of the legislature, it must be assumed that the substitution of "criminal action" for "criminal violence" was intentional, and give it effect accordingly.

The rule as found in section 421 was the rule of the common law, and 1156 designed to and did change that rule. It seems to me clear, therefore, that the wife was a competent witness to give testimony against the husband in this action.

A more difficult question, however, is presented by the fact that her testimony in this case was as to a communication made by him to her pending their marital relations and in the absence of any third person. The question is whether the language of Section 1156 is sufficiently broad to cover testimony as to such a communication. If given full scope and its widest meaning, it undoubtedly is, for the limitation is not as to the character of the testimony, but as to the character of the action, and, as we have already seen, the character of the action described in the statute seems to be fully met by the facts in this case. And not only is the action such an one as to be within the exception of this statute, but the communication itself is strictly within the language of the exception.

The general provision of the section is that "neither husband nor wife shall be examined as to *any* communica-